

No. 11584

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MITSUKIYO YOSHIMURA,  
Appellant,

vs.

HENRY ROBINSON, Acting U. S. Collector of  
Internal Revenue,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Hawaii

FILED  
MAY 10 1947  
PAUL P. QUINN,  
CLERK



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for the Territory of Hawaii



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

MITSUKIYO YOSHIMURA,

SHIRO KASHIWA,

209 Hawaiian Trust Building,  
Honolulu, T. H.

For the Plaintiff.

HENRY ROBINSON,

Acting U. S. Collector of Internal Revenue,

RAY J. O'BRIEN,

U. S. District Attorney,

Federal Building,  
Honolulu, T. H.,

For the Defendant. [1\*]

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court  
for the District of Hawaii

Civil No. 733

MITSUKIYO YOSHIMURA,

Plaintiff,

vs.

FRED H. KANNE,

U. S. Collector of Internal Revenue,

Defendant.

### CLERK'S STATEMENT

Time of Commencing Suit: June 18, 1946. Complaint filed.

Names of Original Parties: Mitsukiyo Yoshimura, Plaintiff; Fred H. Kanne, Defendant.

Dates of Filing Pleadings:

1946

Aug. 8—Motion to Dismiss and Memorandum of Points and Authorities.

Dec. 10—Answer of Defendant.

1947

Jan. 16—Judgment.

Jan. 31—Order Sustaining Motion to Dismiss.

Proceedings in the above entitled matter were had before the Honorable J. Frank McLaughlin, Judge, United States District Court, District of Hawaii.

Dates of Filing Appeal Documents:

1947

Jan. 17—Notice of Appeal.

Jan. 27—Cost Bond.

Feb. 4—Statement of Points and Designation of Record. [2]

Feb. 10—Motion for Order Extending Time, Affidavit and Order.

Feb. 10—Amended Designation of Record.

CERTIFICATE OF CLERK  
TO THE ABOVE STATEMENT

United States of America,

District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the dates when the respective pleadings were filed; the name of the judge presiding; and the dates when appeal pleadings were filed in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of March, A. D. 1947.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk,

[Title of District Court and Cause.]

### COMPLAINT

To the Honorable, the Presiding Judge of the  
District Court of the United States for the  
District of Hawaii:

Comes now Mitsukiyo Yoshimura, plaintiff above  
named, and alleges as follows:

#### I.

The ground upon which the jurisdiction of this  
court is involved and depends is as follows:

This is an action filed by the plaintiff for a per-  
manent injunction pursuant to Section 24 of the  
Judicial Code as amended, U. S. C. Title 28, Sec-  
tion 41, Paragraphs 1 and 5, and to Rules 2 and  
65 of the Federal Rules of Civil Procedure.

#### II.

Defendant Fred H. Kanne is and was at all  
times mentioned herein a resident and citizen of  
the Territory of Hawaii and a citizen of the  
United States of America and is and was at all  
times mentioned herein the duly appointed Col-  
lector of Internal Revenue within the Territory of  
Hawaii, and as such collector was and is empow-  
ered to collect any and all taxes [5] due to the  
United States Government from resident and citi-  
zens of the Territory of Hawaii including net  
income taxes due to the United States from resi-  
dents of the Territory of Hawaii.

III.

Plaintiff Mitsukiyo Yoshimura is and was at all times mentioned herein a subject and citizen of the Empire of Japan and has been a resident of the Territory of Hawaii continuously for about 30 years next preceding the filing of this action.

IV.

Plaintiff has been continuously for the last 13 years and is now conducting a service station business on Kamehameha Highway at Waiiau between Pearl City and Aiea of the City and County of Honolulu, Territory of Hawaii; said service station business has been his sole source of income during the entire said 13 years.

V.

Plaintiff has heretofore filed in compliance with the law his annual Federal net income tax returns and each such return represented his true net profits from the business and plaintiff has paid any and all taxes due on such returns.

VI.

On or about the latter part of the year 1944 or in early 1945, an investigator named Latti then hired and employed by the United States Government and assigned to the Bureau of Internal Revenue, Treasury Department, visited the business premises of the plaintiff at Waiiau aforementioned and demanded that the plaintiff show and display to him the books of the plaintiff's said business for the years 1941, 1942 and 1943, and as a result of such request the plaintiff handed his books [6]

and records for the said years to the said investigator for examination.

#### VII.

That the said investigator looked over the said books and informed the plaintiff that the plaintiff had defrauded the United States Government of thousands of dollars in taxes, and that if the plaintiff did not sign a certain statement admitting fraud to be prepared by the said investigator, that the plaintiff being a subject of any enemy country would be in a very precarious position and that possibly plaintiff may be interned.

#### VIII.

That the plaintiff has had little education; that he has never fully mastered the English language; that the said Bureau of Internal Revenue through its agents never obtained a competent interpreter for him; that the legal effect of the signing of the said statement admitting fraud was never explained to him; that the word "fraud" was never defined to him; that at the said time Japanese alien residents of Hawaii were being interned and imprisoned in large number for unexplained reasons by a government headed by a "Military Governor"; that said interned alien residents were not tried before this court or any court of competent jurisdiction but were imprisoned and detained for many years under the authority of said Military Governor; that the plaintiff had heard of the summary internment processes of the "military government" of Japanese aliens; that plaintiff was in fear of

the powers of internment of the Military Governor; that plaintiff feared that the said investigator would cause the plaintiff to be interned; that plaintiff would not [7] have signed the said statement of fraud had there been no such threat of internment and had he fully comprehended the meaning of the fraud statement; that he did sign the said statement admitting income tax fraud but that it was not upon his free will; that the said fraud statement is in the possession of the Bureau of Internal Revenue.

### IX.

That thereafter during the latter part of the year 1945 or in early 1946, investigators from the Bureau of Internal Revenue again visited the premises of the plaintiff and requested that plaintiff sign three forms called "Form 870", a copy of which is attached hereto, marked Exhibit "A", and reference to which is hereby made as if fully recited herein, waiving any and all restrictions on the assessment and collection of deficiency in taxes for the years 1941, 1942 and 1943.

### X.

That the plaintiff told the said investigators that the plaintiff had consulted an attorney with relation to the Federal income tax matters for the said years and that the plaintiff had been advised to not sign any papers thereafter without the approval of the said attorney; that the plaintiff wanted to see said attorney before signing said papers and requested that he be permitted to see his attorney;

that said investigators said that an attorney was not necessary and that since plaintiff had signed the statement admitting fraud referred to in paragraphs 7 and 8 above that he was in a very dangerous position and cited the various examples of Federal income tax evaders who were imprisoned after conviction before the Federal District Court of Honolulu; that the plaintiff has been informed and alleges as a fact upon such information that at the said time said [8] investigators and their superiors well knew that the legal authorities in charge of prosecution of the plaintiff's case had gone over the criminal aspect of the plaintiff's case and had advised against prosecution in spite of the said written confession; that the threat of prosecution was used as a hammer to obtain the signature on the three waivers aforementioned; that the plaintiff did under the foregoing circumstances sign said waivers; that his signature was put on said waivers under compulsion and that it was not by his free will; that the said waiver form are now in the possession of the Bureau of Internal Revenue.

#### X.

That the plaintiff immediately after signing said waiver forms contacted his attorney and with his attorney went to the office of the investigators requesting that the said waiver forms be returned; that the investigator in charge of the office reported that it was too late because the waiver forms were mailed to Washington, D. C., and refused to give said waiver forms back; that plaintiff through



this attorney wrote to Washington to the Bureau of Internal Revenue there requesting a consideration of the matter but his request was refused.

### XI.

That as a result of the signing of said forms the plaintiff on or about May 20, 1946, received from the defendant a tax bill for deficiencies and penalties for the following amounts:

Year	Deficiency	50 per cent Penalty
1941 .....	\$1,021.94	\$ 510.97
1942 .....	1,792.25	896.13
1943 .....	3,510.81	1,755.41
	<hr/>	<hr/>
Totals .....	\$6,325.00	\$3,162.51

### XII.

That defendant in said tax bill demanded the immediate payment of the said total sum or else that he, the defendant, would seize and sell the properties of the plaintiff.

### XIII.

That the plaintiff has not in his possession \$9,487.51 in cash and/or in real and personal property to make payment and claim a refund, and if the defendant is permitted to seize and sell the properties of the plaintiff, the plaintiff would be irreparably damaged.

### XIV.

That the land and building whereon plaintiff's service station is situated is not his own but it is rented by him on a month to month basis.

## XV.

That the plaintiff has no adequate plain and complete remedy at law and he has no remedy under the appellate procedure provided for under the Internal Revenue laws and regulations.

## XVI.

That the plaintiff cannot appeal from the said assessment made by the Bureau of Internal Revenue to the Tax Court and other higher tax tribunals because of the aforementioned waivers which he signed under the conditions aforestated.

Wherefore, Plaintiff demands that the court adjudge:

1. That the assessments aforesaid for the years 1941, 1942 and 1943 in the total sum of \$9,487.51 be vacated.

2. That the defendant be permanently enjoined from collecting said taxes for the years 1941, 1942 and 1943 in the sum of \$9,487.51 from the plaintiff.

3. That the plaintiff be granted whatever other relief which is just and equitable. [10]

Dated at Honolulu, T. H., this 13th day of June, A.D. 1946.

/s/ MITSUKIYO YOSHIMURA,  
Plaintiff.

/s/ SHIRO KASHIWA,  
Attorney for Plaintiff.

Territory of Hawaii,  
City and County of Honolulu—ss.

Mitsukiyo Yoshimura, being first duly sworn on oath, deposes and says: That he is the plaintiff herein; that he has read the foregoing Complaint, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

/s/ MITSUKIYO YOSHIMURA.

Subscribed and sworn to before me this 13th day of June, A.D. 1946.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires August 9, 1947. [11]

EXHIBIT "A"

Form 870

Treasury Department  
Internal Revenue Service  
(Revised June 1941)

Waiver of Restrictions on Assessment  
and Collection of Deficiency in Tax

(Date Received)

Pursuant to the provisions of section 272(d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272(a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby

waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

(declared value) excess-profits

tax in the sum of \$.....

taxable year ended.....

excess profits tax in the sum of \$.....

taxable year ended.....

in the sum of \$.....

amounting to the total sum of \$.....

together with interest thereon as provided by law.

.....  
(Taxpayer)

.....  
(Taxpayer)

.....  
(Address)

By.....

Date .....

Note.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as in-

dicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a joint return of a husband and wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed. [12]

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[Title of District Court and Cause.]

### SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Shiro Kashiwa, plaintiff's attorney, whose address is 209 Hawaiian Trust Building, Honolulu 48, Territory of Hawaii, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judg-

ment by default will be taken against you for the relief demanded in the complaint.

Date: June 18, 1946.

/s/ WM. F. THOMPSON, JR.,  
Clerk of Court. [13]

### RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 18th day of June, A.D. 1946, I received the within summons and the same is returned duly executed by exhibiting the Original Summons to Fred H. Kanne, U. S. Collector of Internal Revenue, Honolulu, T. H., and by handing to and leaving with him a certified copy of the Original Summons and a certified copy of the Complaint attached thereto.

Dated at Honolulu, T. H., this 18th day of June, A.D. 1946.

OTTO F. HEINE,  
U. S. Marshal,  
District of Hawaii.

By /s/ GEORGE E. BRUNS,  
Deputy.

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[Title of District Court and Cause.]

### MOTION TO DISMISS

Comes now the defendant, Fred H. Kanne, United States Collector of Internal Revenue, by Ray J. O'Brien, United States Attorney for the District

of Hawaii, and move the Court to dismiss the complaint upon the following grounds:

(1) That the Court is without jurisdiction of the subject matter of this suit for the reason that it affirmatively appears on the face of the complaint that the instant proceeding is a suit to enjoin the collection of a Federal tax.

(2) That the complaint fails to state a claim upon which equitable relief can be granted.

(3) That it affirmatively appears on the face of the complaint that the defendant, Fred H. Kanne, is the United States Collector of Internal Revenue for the District of Hawaii, an agent and official of the United States of America of the Treasury Department, [15] Bureau of Internal Revenue, and that therefore the United States of America is the real party in interest in these proceedings and may not be sued without its consent.

Dated: Honolulu, T. H., this 8th day of August, 1946.

FRED H. KANNE,  
U. S. Collector of  
Internal Revenue.

By RAY J. O'BRIEN,  
United States Attorney,  
District of Hawaii.

By /s/ EDWARD A. TOWSE,  
Assistant United States  
Attorney, District  
of Hawaii,  
Attorney for Defendant.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND  
AUTHORITIES

Section 3653 of the Internal Revenue Code (26 U.S.C.A. 3653) by its terms expressly prohibits suits to restrain the assessment or collection of any tax:

“§3653. Prohibition of suits to restrain assessment or collection.

(a) Tax. Except as provided in sections 272(a), 871(a) and 1012(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.”

The inhibition of this section applies to all assessments of taxes, legal or illegal made under color of their offices by Internal Revenue officers charged with the general jurisdiction of the subject of assessing taxes.

*Snyder v. Marks*, 109 U. S. 189;

*Dodge v. Osborn*, 240 U. S. 118;

*Pittsburg, etc. R. Co. v. Board of Public Works*, 172 U. S. 32;

*Pacific Steam Whaling Company v. U. S.*,  
187 U. S. 447.



Enforcement of a jeopardy assessment may not be enjoined.

*Salikoff v. McCaughin*, 24 F. 2d 434.

Imposition of heavy fines or penalties is insufficient to envoke equitable aid to restrain collection of tax. Equity [17] will not enjoin collection of tax because of financial inability to pay it.

*Woner v. Lewis*, 13 Fed. Supp. 45;

*Danahy Packing Co. v. McGowan*, 11 Fed. Supp. 920.

The complaint herein affirmatively alleges that the defendant, Fred H. Kanne, is and was at all times mentioned in the complaint the duly appointed collector of Internal Revenue within the District of Hawaii empowered to collect any and all taxes due to the United States of America from residents and citizens of the Territory of Hawaii including net income taxes due to the United States of America from residents of the Territory. That the defendant, in that capacity, is an agent and officer of the United States of America, is too well established to require the citation of authority in support thereof.

An action or proceeding will not lie against the United States of America for the misfeasance or nonfeasance of its officers or agents.

*Givens v. United States*, 8 Wall. 269, 274;

*Russell v. United States*, 182 U. S. 516, 530;

*Peabody v. United States*, 231 U. S. 530, 539.

Dated: Honolulu, T. H., this 8th day of August, 1946.

Respectfully submitted,

RAY J. O'BRIEN,  
United States Attorney,  
District of Hawaii.

By /s/ EDWARD A. TOWSE,  
Assistant United  
States Attorney,  
District of Hawaii. [18]

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[Title of District Court and Cause.]

### ANSWER OF DEFENDANT

Comes now Ray J. O'Brien, United States Attorney for the District of Hawaii and for answer to the Bill of Complaint of the plaintiff in the above entitled cause and on behalf of the defendant above named says:

#### I.

In answer to the allegations of the paragraphs numbered "I to V" inclusive of the Bill of Complaint alleges, admits, denies and by way of answer thereto says:

#### 1.

Answering paragraph I of the complaint, defendant denies that this Honorable Court has jurisdiction of the subject matter of the Bill of Complaint.

#### 2.

Admits the allegation of paragraph II of the Complaint.

3.

Defendant lacks sufficient knowledge to form a belief as to paragraph III of the Bill, and leaves the plaintiff to proof thereof. [20]

4.

Defendant lacks sufficient knowledge to form a belief as to paragraph IV of the Bill and leaves the plaintiff to proof thereof.

5.

As to the matters alleged in paragraph V of the Bill of Complaint, the defendant considers such matters are immaterial to this cause; but if considered material and placed in issue, denies each and every allegation thereof as the same pertains to the taxable years 1941, 1942 and 1943.

6.

As to the matters alleged in paragraph VI of the Bill of Complaint, the defendant considers such matters are immaterial to this cause; but if considered material and placed in issue admits, denies and alleges as follows:

Admits that Investigators of the Bureau of Internal Revenue, Treasury Department, at various times prior to the filing of the Bill of Complaint herein visited the premises then occupied by the plaintiff at Waiiau, Island of Oahu.

Denies that the said Internal Revenue agents demanded that the plaintiff show and display to them the books of the plaintiff's business for the years 1941, 1942, and 1943.

Alleges that the plaintiff did, pursuant to lawful authority thereunto delegated to the said agents, voluntarily tender his incomplete business books and records for the said years to the investigators upon their request and for the purpose of examination.

## 7.

Answering paragraph VII of the Bill of Complaint admits that the Investigators looked over and examined the said incomplete books and records.

Denies that the investigators or any of them informed the plaintiff that if he did not sign a certain statement admitting fraud, to be prepared by the said investigators, that the plaintiff being a subject of an enemy country would be in a very precarious position and that possibly plaintiff may be interned.

## 8.

Answering paragraph VIII of the Bill of Complaint defendant admits and denies as follows:

Defendant has no knowledge upon which to form a belief as to whether or not the plaintiff has had little education, and leaves the plaintiff to proof thereof.

Defendant has no knowledge upon which to form a belief as to whether or not the plaintiff has ever fully mastered the English language but alleges that the plaintiff does possess a sufficient working knowledge of the English language to enable him to conduct a sizeable business within an American community and possesses sufficient knowledge thereof to enable him to conduct his business and maintain

the books and records thereof in the English language.

Denies that the Bureau of Internal Revenue through its agents were requested to obtain a competent interpreter for the plaintiff; and in this connection alleges that the plaintiff did not request that an interpreter be provided for him and that any discussion had with the plaintiff was conducted in the English language which the plaintiff understood.

Denies that the legal effect of the signing of the said statement admitting a fraud was never explained to him; and in this connection alleges that the legal effect was in fact fully and completely explained to the plaintiff prior to the signing thereof.

Denies that the word "fraud" was never explained to the plaintiff; and in this connection alleges that the legal effect and import of whatever action the plaintiff would take in the premises was fully and thoroughly explained to him prior to the signing thereof.

Admits that insofar as defendant's knowledge based upon information and belief of the then existing government was concerned, that persons of Japanese descent who were residents of the Territory of Hawaii were being interned and imprisoned, in what numbers and for what precise reasons being to the defendant unknown.

Defendant has no knowledge upon which to base a belief as to whether or not interned alien residents were tried before this Court or any court of competent jurisdiction or were imprisoned and de-

tained for many years under the authority of a military governor.

Defendant has no knowledge as to whether or not the plaintiff had heard of the summary internment processes of the "military government" as to Japanese aliens.

Defendant has no knowledge as to whether or not plaintiff was in fear of the powers of internment of the military governor.

Defendant denies that the said Investigators caused the plaintiff to fear that he would be interned.

Defendant has no knowledge as to whether or not plaintiff would not have signed the said statement of fraud had there been no such threat of internment and had he fully comprehended the meaning of the fraud statement; and in this connection specifically denies that any threats of interment or lack of comprehension of the meaning of the fraud statement was practiced or imposed upon the plaintiff. [23]

Admits that the plaintiff did sign a statement admitting income tax fraud, but denies that the said statement is material to this cause; and if the said statement be material to this cause alleges that it was signed as the free act, will and deed of the said plaintiff.

Alleges that the said fraud statement is immaterial to this cause for the reason that any "fraud statement" so voluntarily tendered to the Bureau of Internal Revenue, Treasury Department, by the plaintiff, constitutes a portion of an official report

of the Bureau of Internal Revenue, Treasury Department, relative to an investigation for criminal responsibility, and as such is immaterial to this civil proceeding; and for the further reason that the limitation of action upon criminal prosecution as to the plaintiff for the alleged fraud is for a period of six years, which six years have not expired on the date hereof.

Further answering paragraph VIII of the Complaint the defendant alleges that this Honorable Court will judicially note that the Internal Revenue Statutes and Regulations were at no time during the period in the Complaint set forth suspended or terminated as they pertained to lawful payment of individual income taxes due to the United States.

## 9.

Answering paragraph IX of the Complaint defendant admits that prior to the filing of the Bill of Complaint duly authorized investigators of the Bureau of Internal Revenue, Treasury Department, visited the then premises of the plaintiff and pursuant to law, and in that respect duly authorized and upon identifying themselves and explaining the purpose of their visit did request that the plaintiff sign the said "Form 870." [24]

## 10.

Answering paragraph X of the Complaint, admits that the plaintiff told the said Investigators that he did have an attorney; and in this connection alleges that the plaintiff was invited to forthwith

proceed to a conference with the said attorney, which offer was declined by the plaintiff.

Defendant has no knowledge as to whether or not the plaintiff had been informed that the legal authorities in charge of prosecution of the plaintiff's case had gone over the criminal aspect of the plaintiff's case and had advised against prosecution in spite of the said written confession; and in this connection denies that the foregoing is material to this cause, but if it be considered material defendant alleges that the determination to be made as to the institution of criminal proceedings relative to the plaintiff is an official function of the appropriate agency of the United States in charge thereof and that the six years period of time within which said criminal proceedings against the plaintiff may be instituted has not expired on the date hereof.

Denies that any threats of prosecution were used as a hammer to obtain the signature on the waivers.

Denies that the plaintiff signed the said waivers under the circumstances recited in paragraph IX.

Denies that the plaintiff's signature was placed on the said waivers under compulsion and not by his free will.

10.

Answering paragraph X of the Bill of Complaint defendant admits that the plaintiff appeared, together with his attorney, at the office of the investigators, and requested that the said waivers forms be returned; but denies that the plaintiff made



the said request immediately after the signing of the said waiver forms. [25]

Admits that the investigator in charge of the said office reported that the said waiver forms had been mailed to Washington, D. C.; and in this connection admits that the said investigators in charge could not return the said waivers for this reason.

The defendant has no knowledge as to whether or not the plaintiff through his attorney wrote to Washington to the Bureau of Internal Revenue and requested consideration of the matter and that said request was refused.

## 11.

Answering paragraph XI of the Bill of Complaint the defendant admits that, according to law, the plaintiff was duly tendered a tax bill for deficiencies and penalties in the amounts alleged in paragraph XI of the Complaint.

## 12.

Plaintiff admits that the said tax bill, according to law and by its terms, demanded the payment of the said total sum, or in lieu thereof seizure and sale of the properties of the plaintiff other than those properties exempted by law.

## 13.

Answering paragraph XIII of the Complaint defendant has no knowledge as to whether or not plaintiff, on the date hereof, has the sum of \$9487.51 in his possession in cash and/or in real or personal property by which to make payment and claim a refund; and in this connection alleges that the finan-

cial inability of the plaintiff in itself to meet the said tax bill is insufficient in law to justify the assumption of jurisdiction of these proceedings by this Honorable Court; and for the further reason that the plaintiff fails to allege in his said Bill of Complaint any measure of hardship, the exhaustion of available administrative remedies under the laws of the United States, the exhaustion of remedies as law, the illegality or unconstitutionality of the tax in question, or any extraordinary and exceptional [26] circumstances as the basis of the jurisdiction of this Honorable Court of these proceedings. Defendant denies that the seizure and sale of such properties of the plaintiff, according to law, save and except those properties exempt by law from such seizure and sale would result in irreparable damage to the plaintiff.

## 14.

Answering paragraph XIV of the Bill of Complaint the defendant states upon information and belief that the land and buildings whereon plaintiff's former service station business was situate was rented by him.

## 15.

Answering paragraph XV of the Bill of Complaint the defendant denies that the plaintiff has no plain, adequate and complete remedy at law and denies that he has no remedy under the appellate procedure available to him under the Internal Revenue laws and regulations; and in this connection alleges that the plaintiff in the premises, has, in the alter-

native, five plain, adequate and complete remedies, to wit:

1. Administrative appeal to the Treasury Department.

2. The payment of the amount of tax due under the tax bill.

3. Action at law against the Collector of Internal Revenue for the District of Hawaii to recover the amount so assessed and paid, (under alternative "2" supra).

4. By offer in compromise submitted to the Treasury Department in full discharge of the entire amount claimed under the tax bill and based upon the plaintiff's financial ability to pay an amount offered in compromise less than the full amount, which, after examination of the plaintiff's assets and acceptance [27] by the said Treasury Department would, if accepted, be in full settlement and discharge of the total amount of the said tax bill.

5. By consent and approval of the Collector of Internal Revenue of the District of Hawaii to the payment in installments not to exceed the period of six years of the amount set forth in the tax bill; all of the foregoing remedies and relief available to the plaintiff herein being according to law and the statutes and regulations of the Bureau of Internal Revenue, Treasury Department, United States of America.

16.

Answering paragraph XVI of the Bill of Complaint defendant admits that, according to law, the execution of the said waivers (Form 870) precludes recourse to the United States Tax Court; and in this connection reiterates and denies that the said waivers were executed under the conditions and circumstances alleged in the Bill of Complaint.

17.

Defendant denies each and every allegation in the Bill of Complaint not herein admitted, controverted or specifically denied.

II.

For a second, further, separate and distinct defense to the said Bill of Complaint the defendant says:

1.

That at Honolulu, on the 14th day of August, 1946, the plaintiff voluntarily executed a declaration and statement of his, the said plaintiff's net worth, in affidavit form, a true, full and complete copy of which is annexed hereto marked "Exhibit A," and incorporated herein by reference; which said affidavit declares that the said plaintiff did quit his business of conducting a service station at the end of August, 1946, and is no longer engaged in said service station business. [28]

2.

That by reason of the foregoing there exists no extraordinary or exceptional circumstances as a matter of law which may be invoked as the basis of the jurisdiction of the Court herein.

III.

For a third, further, separate and distinct defense to the said Bill of Complaint the defendant alleges:

1.

That by virtue of the plaintiff's termination of his business at the end of August, 1946, as aforesaid, the plaintiff cannot, as a matter of law, suffer irreparable damages in the premises having voluntarily abandoned his sole source of income.

IV.

For a separate and distinct defense in points of law arising upon the face of the Bill of Complaint herein the defendant alleges that the facts alleged in the said Bill of Complaint are insufficient to constitute a valid cause of action in equity upon the following grounds:

1.

That the Court is without jurisdiction of the subject matter of the suit for the reason that it affirmatively appears that the instant proceeding is a suit to enjoin the collection of a federal tax which suit is prohibited by law.

2.

That the Complaint fails to state a claim upon which equitable relief can be granted.

3.

That the nature of the tax is one upon income, and the plaintiff fails to attack or contest the legality of the tax as such. [29]

## 4.

That the nature of the tax is one upon income, and the plaintiff does not attack, challenge, or question the constitutionality of the tax as such.

Wherefore the defendant prays that the said Bill of Complaint be dismissed and that the plaintiff be denied his relief sought herein or any other relief by way of temporary or preliminary injunction restraining order or permanent injunction.

Dated at Honolulu, T. H., this 9th day of December, A.D., 1946.

/s/ FRED H. KANNE,  
Defendant, Collector of Internal Revenue, District  
of Hawaii.

Territory of Hawaii,  
City and County of Honolulu—ss.

Fred H. Kanne, being first duly sworn on Oath deposes and says: That he is the defendant herein; that he has read the foregoing Answer, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 9th day of December, A.D. 1946.

[Seal] /s/ E. C. ROBINSON,  
Deputy Clerk, United States District Court, Dis-  
trict of Hawaii. [30]

EXHIBIT "A"

Affidavit of Net Worth

Territory of Hawaii,

City and County of Honolulu—ss.

Mitsukiyo Yoshimura, being first duly sworn, on oath deposes and says:

That the following statement is my net worth:

Bank of Hawaii, Waipahu Branch.....	\$ 444.44
Savings account, same bank.....	40.00
Cash on hand.....	1,028.00
Accounts receivable .....	385.00
Notes receivable .....	250.00

(payor just got out of Leahi Home)

Land and building at Aiea—net worth 3,000.00

(Purchased for \$6,000.00, of which \$3,000.00 borrowed from Bert Yoshimura, a brother, on April 27, 1946.) I bought this for my home.

No liabilities, except the \$3,000.00 to Bert Yoshimura.

Note: Quit business at end of August, 1946, because Government is fixing road in front of service station and there isn't any more business. Rent of \$150.00 per month can't be met. The service station must be raised to meet the new road level or else there will be no business. If raised by landlord, he says rent will be \$200.00 per month.

that this statement is made to the United States Collector of Internal Revenue to show my net worth

as of October 14, 1946; and further affiant sayeth not.

/s/ MITSUKIYO YOSHIMURA

Subscribed and sworn to before me this 14th day of October, A. D. 1946.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1947. [31]

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In the United States District Court for the  
Territory of Hawaii

April Term 1946

Civil No. 733

MITSUKIYO YOSHIMURA,

Plaintiff,

vs.

FRED H. KANNE, U. S. Collector of Internal  
Revenue,

Defendant.

### JUDGMENT

Pursuant to the oral order of dismissal of this Court upon the defendant's motion to dismiss at the end of the plaintiff's presentation of his evidence in this case,



It Is Hereby Adjudged and judgment be and is hereby entered for the defendant and against the plaintiff in the above entitled cause and court.

Dated at Honolulu, T. H., this 16 day of January, 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the above entitled  
Court.

Approved as to form:

FRED H. KANNE,  
U. S. Collector of Internal Revenue,  
Plaintiff,

By /s/ EDWARD A. TOWSE,  
Assistant United States Attorney,  
Attorney for Defendant.

MITSUKIYO YOSHIMURA,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
Attorney for Plaintiff. [33]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Mitsukiyo Yoshimura, Plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 16th day of January, 1947.

Dated at Honolulu, T. H., this 17th day of January, 1947.

MITSUKIYO YOSHIMURA,

Plaintiff,

By /s/ SHIRO KASHIWA,

Attorney for Appellant. [35]

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[Title of District Court and Cause.]

COST BOND

Know All Men By These Presents:

That I, Mitsukiyo Yoshimura, as principal, and Melville G. Uechi and Richard K. Yamada, as sureties, are held and firmly bound unto Henry Robinson, Acting U. S. Collector of Internal Revenue, Defendant substituted, in the sum of Two Hundred Fifty and No/100 Dollars (\$250.00); to which payment well and truly to be made we bind ourselves and our respective heirs, executors, administrators and assigns, jointly and severally, by these presents.

Signed and sealed with our seals and dated this 24th day of January, 1947.

Whereas, Mitsukiyo Yoshimura, Plaintiff above named, has prosecuted his appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment entered in this cause by the United States District Court for the Territory of Hawaii on the 16th day of January, 1947;

Now, Therefore, the condition of this obligation

is such that if the above named Plaintiff, principal herein, shall prosecute [37] his appeal to effect and pay all costs if the appeal is dismissed or the judgment affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

[Seal]        /s/ MITSUKIYO YOSHIMURA,  
Principal

[Seal]        /s/ MELVILLE G. UECHI,

[Seal]        /s/ RICHARD K. YAMADA,  
Sureties.

Territory of Hawaii,  
City and County of Honolulu—ss.

Melville G. Uechi and Richard K. Yamada, each being first duly sworn, on oath, deposes and says:

That he is a surety on the foregoing cost bond; that he is a citizen of the United States of America; that he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that he is over 21 years of age; that he is not under guardianship; nor is he restrained or prevented from dealing with his property by any legal proceedings; that he is the owner of unencumbered property situated in the Territory of Hawaii aforesaid which is subject to execution and worth more than double the amount of the penalty specified in the foregoing bond, over and above all debts, liabilities and obligations.

/s/ MELVILLE G. UECHI,

/s/ RICHARD K. YAMADA.

Subscribed and sworn to before me this 24th day of January, A. D. 1947.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires Aug. 9, 1947.

Approved as to form and sufficiency of sureties:

/s/ EDWARD A. TOWSE,

Assistant United States Attorney,  
Attorney for Defendant.

/s/ J. FRANK McLAUGHLIN,

Judge of the above entitled Court. [38]

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[Title of District Court and Cause.]

### ORDER SUSTAINING MOTION TO DISMISS

This suit was brought to enjoin the Collector from collecting from the Plaintiff income taxes for the years 1941, 1942, and 1943 in the total sum of Six Thousand Three Hundred Twenty-five Dollars (\$6,325.00) representing deficiencies for those years, plus a 50% penalty for the same years of Three Thousand One Hundred Sixty-two and 51/100 Dollars (\$3,162.51).

At the outset, the Defendant moved to dismiss the complaint on points of law. The Court overruled the Motion on the ground that taking the facts well pleaded as true, it appeared that the Plaintiff had stated a case within the judicial ex-

ception to the statutory prohibition against the enjoining of the collection of taxes, 26 U.S.C. Sec. 3653, for it was alleged:

1. That Plaintiff was a subject of Japan, poorly educated, who spoke barely sufficient English to operate his gasoline filling station—his sole source of income.

2. That he had filed true tax returns for the years in question and paid his taxes. [40]

3. That a representative of the Intelligence Unit of the Treasury Department visited him in 1944 and while looking over his books indicated to Plaintiff that he had defrauded the government and that being an alien he was in a dangerous position and might be interned by the Army.

4. That being in fear of internment by the Army and, though not understanding the meaning of the word "fraud," Plaintiff signed a statement for the investigator admitting fraud.

5. That thereafter, late in 1945 or early 1946, representatives of the Treasury Department again called upon Plaintiff and asked him to sign in blank a Form 870; that he declined to sign it until he consulted his lawyer, but that the Treasury men persuaded him that such was not necessary and that since he had signed a fraud statement he should sign the Form 870 or he might be criminally prosecuted and imprisoned by the Federal Court as others recently had been; so Plaintiff signed the form.

6. That he thereafter consulted his lawyer,

who in turn asked for the return of the signed in blank Form 870 but was refused by the Treasury Department.

7. And, finally, that the Plaintiff does not have Nine Thousand Four Hundred Eighty-seven and 51/100 Dollars (\$9,487.51) and that if Defendant seizes and sells what little property Plaintiff has, he will be unjustly and irreparably damaged for he has no remedy at law and is denied access to the Tax Appeal Court, having signed the Form 870.

In view of these astounding allegations, especially those as to threatened internment by the Army, forceful persuasion to obtain a signature to a blank Form 870 while knowing the Plaintiff had a lawyer, and the threat that this Court would imprison Plaintiff as a tax evader if he didn't sign the Form 870, the [41] Court decided it appeared to be a case within the exception to the statute and would hear the evidence.

Accordingly, the parties proceed to trial. At the conclusion of the Plaintiff's case, the Defendant renewed his Motion to Dismiss on the ground that regardless of that shown by the evidence, in point of law, Plaintiff could not obtain the relief prayed for.

As against the Motion, giving the Plaintiff's evidence its best possible interpretation—and it was not too clear or satisfying—and assuming that Plaintiff had portrayed in a sufficient manner “exceptional circumstances” the Court—despite the fact that its sympathies were, upon the showing,

with the Plaintiff due to the shabby way he had been treated by the government's representatives—sustained the government's renewed Motion to Dismiss.

### FINDINGS OF FACT

Viewed as against the Motion, I find that the Plaintiff's evidence at least sufficiently supports the allegation of the Complaint (above outlined) to require the government to go forward unless as a matter of law, Plaintiff could not obtain the relief prayed for.

### CONCLUSIONS OF LAW

The law being that to come within the judicial exception to 26 U.S.C. Section 3653, it is necessary to show not only "exceptional circumstances" but also that the tax law is either unconstitutional or invalid as applied to Plaintiff—and the Plaintiff failing to show either that the income tax law was unconstitutional or that it was invalid as applied to him—I conclude that

As a matter of law, proof of exceptional circumstances alone are not enough to warrant the granting of the relief prayed for—to wit—an injunction to prevent the collection of assumed deficiency tax and the penalty. [42]

This written decision—conforming as it does to the Court's oral ruling—may be filed as of the date of the ruling sustaining the Motion to Dismiss.

Dated at Honolulu, Territory of Hawaii, January 31, 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge.

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[Title of District Court and Cause.]

### STATEMENT OF POINTS

The points upon which appellant intends to rely on this appeal are as follows:

1. The Court erred in granting, after plaintiff rested his case, defendant's motion to dismiss on the ground that the Court had no jurisdiction of the cause.

2. The Court erred in granting, after the plaintiff rested his case, defendant's motion on the ground that the plaintiff's evidence was not sufficient to grant relief as prayed for by the plaintiff.

Dated at Honolulu, T. H., this 4th day of Feb., A. D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff,

By /s/ SHIRO KASHIWA,  
His Attorney. [45]



[Title of District Court and Cause.]

## DESIGNATION OF RECORD

Appellant designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action.

1. Complaint and the attached Exhibit "A".
2. Summons and Officer's Return on Service of Writ.
3. Motion to Dismiss and Memorandum of Points and Authorities.
4. Answer and the attached Exhibit "A".
5. Entire transcript of evidence.
6. Following exhibits in evidence.
  - (a) Plaintiff's Exhibit "A-1".
  - (b) Plaintiff's Exhibit "A-2".
  - (c) Plaintiff's Exhibit "A-3".
  - (d) Plaintiff's Exhibit "B".
  - (e) Plaintiff's Exhibit "C".
  - (f) Plaintiff's Exhibit "D".
  - (g) Plaintiff's Exhibit "E".
  - (h) Plaintiff's Exhibit "F". [46]
7. Order Sustaining Motion to Dismiss.
8. Judgment.
9. Notice of Appeal.
10. Statement of Points.
11. Designation of Record.

Dated at Honolulu, T. H., this 4th day of February, A. D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff.

By /s/ SHIRO KASHIWA,  
His Attorney. [47]

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[Title of District Court and Cause.]

### MOTION FOR ORDER EXTENDING TIME

Comes now Mitsukiyo Yoshimura, plaintiff-appellant above named, by Shiro Kashiwa, his attorney, and shows the Court:

1. That on January 16, 1947, judgment was entered and filed in the above entitled cause.

2. That on January 17, 1947, a Notice of Appeal was filed in said cause.

3. That shortly thereafter counsel for plaintiff-appellant orally requested the reporter of the above entitled Court to prepare a transcript of the proceedings had in said cause and that on January 27, 1947, a written order for such transcript was filed in said Court and a copy thereof personally served on said reporter.

4. That said reporter will be unable to complete said transcript until sometime during the first week of March, 1947, due to pressure of his other duties

Wherefore, plaintiff-appellant, by his counsel moves this Honorable Court to issue an order extending the time for filing the record on appeal

with and docketing the action in the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause until April 16, 1947.

This motion is based upon the records of the above entitled cause and upon the affidavit of Albert Grain, the reporter of the above entitled Court, hereto attached.

Dated at Honolulu, T. H., this 8th day of February A. D. 1947.

MITSUKIYO YOSHIMURA,

Plaintiff-Appellant.

By /s/ SHIRO KASHIWA,

His Attorney.

The foregoing motion is approved on this 10th day of February A. D. 1947.

/s/ EDWARD A. TOWSE,

Assistant United States

Attorney,

Attorney for Defendant-

Appellee. [50]

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[Title of District Court and Cause.]

### AFFIDAVIT

Albert Grain, being first duly sworn, on oath deposes and says:

That he is a reporter of the above entitled Court; that between January 16 and January 23, 1947, Shiro Kashiwa orally requested him to prepare

a transcript of the proceedings had in the above entitled cause; and that on or about January 27, 1947, a copy of a written order for such transcript was personally served on him.

Your affiant further says on oath that due to pressure of his other duties he will be unable to complete said transcript until the first week of March, 1947.

Further your affiant sayeth not.

Dated at Honolulu, T. H., this 8th day of February, A. D. 1947.

/s/ ALBERT GRAIN.

Subscribed and sworn to before me this 8th day of February, A. D. 1947.

[Seal] /s/ ABRAHAM W. AKANA,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires 6/30/49. [51]

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[Title of District Court and Cause.]

### ORDER

The motion of Mitsukiyo Yoshimura, plaintiff-appellant above named, by Shiro Kashiwa, his attorney, for an order extending the time for filing the record on appeal with and docketing the action in the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, com-

ing before the Court and it appearing by the records of said cause that a judgment was entered and filed on January 16, 1947, and that a Notice of Appeal was filed on January 17, 1947, and upon the strength of the affidavit of Albert Grain, reporter of the above entitled Court, attached to said motion;

It Is Hereby Ordered that the plaintiff-appellant may have until April 16, 1947, to file his record on appeal with and docket his action in the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause.

Dated at Honolulu, T. H., this 10th day of February, A. D. 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the above entitled  
Court.

Approved:

/s/ EDWARD A. TOWSE,  
Assistant United States  
Attorney,  
Attorney for Defendant-  
Appellee. [52]

[Title of District Court and Cause.]

### AMENDED DESIGNATION OF RECORD

Plaintiff-Appellant designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Complaint and the attached Exhibit "A".
2. Summons and Officer's Return on Service of Writ.
3. Motion to Dismiss and the Memorandum of Points and Authorities.
4. Answer and the attached Exhibit "A".
5. Entire transcript of evidence.
6. Following exhibits in evidence:
  - (a) Plaintiff's Exhibit "A-1".
  - (b) Plaintiff's Exhibit "A-2".
  - (c) Plaintiff's Exhibit "A-3".
  - (d) Plaintiff's Exhibit "B".
  - (e) Plaintiff's Exhibit "C".
  - (f) Plaintiff's Exhibit "D".
  - (g) Plaintiff's Exhibit "E".
  - (h) Plaintiff's Exhibit "F". [54]
7. Order Sustaining Motion to Dismiss.
8. Judgment.
9. Notice of Appeal.
10. Cost Bond.
11. Motion for an Order Extending Time, Affidavit and Order.
12. Statement of Points.
13. Amended Designation of Record.

Dated at Honolulu, T. H., this 8th day of February, A. D. 1947.

MITSUKIYO YOSHIMURA,

Plaintiff-Appellant.

By /s/ SHIRO KASHIWA,

His Attorney. [55]

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[Title of District Court and Cause.]

From the Minutes of the United States District Court for the District of Hawaii

Monday, December 16, 1946

On this day came the plaintiff herein with Mr. Shiro Kashiwa, his counsel, and also came Mr. Edward A. Towse, Assistant United States District Attorney, counsel for the defendant herein. This case was called for hearing.

Motion to dismiss was renewed by Mr. Towse, and was denied by the Court.

Oral motion by Mr. Towse for judgment in favor of the respondent herein was denied by the Court.

Copy of Form 21-A, Second Notice and Demand for Income Tax, for the year 1941, was admitted in evidence as Plaintiff's Exhibit "A-1," marked and ordered filed.

Copy of Form 21-A, Second Notice and Demand for Income Tax, for the year 1942, was admitted in evidence as Plaintiff's Exhibit "A-2," marked and ordered filed.

Copy of Form 21-A, Second Notice and Demand for Income Tax, for the year 1943, was admitted in evidence as Plaintiff's Exhibit "A-3," marked and ordered filed.

Mr. Mitsukiyo Yoshimura, plaintiff herein, was called and sworn and testified on his own behalf.

Bookkeeping sheet was admitted in evidence over the objections of Mr. Towse as Plaintiff's Exhibit "B," marked and ordered filed.

Memorandum of the address of H. Irey was admitted in evidence [56] as Plaintiff's Exhibit "C," marked and ordered filed.

At 3:30 p.m., the Court ordered that this case be continued to December 17, 1946, at 1:30 p.m. for further hearing. [57]

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[Title of District Court and Cause.]

From the Minutes of the United States District Court for the District of Hawaii

Wednesday, December 18, 1946

On this day came the plaintiff herein with Mr. Shiro Kashiwa, his counsel, and also came Mr. Edward A. Towse, Assistant United States District Attorney, counsel for the defendant herein. This case was called for further hearing.

Mr. Yoshimura resumed the witness stand and testified further.

Copy of Affidavit of Net Worth executed by the plaintiff herein was admitted in evidence as Plaintiff's Exhibit "D," marked and ordered filed.



Mr. Kashiwa took the witness stand and testified in this case.

Letter, dated May 20, 1946, Treasury Department, Washington, D. C., to Mr. Mitsukiyo Yoshimura, was admitted in evidence as Plaintiff's Exhibit "E," marked and ordered filed.

At 3:00 p.m., the plaintiff rested his case.

Motion for dismissal was made by Mr. Towse.

At 3:05 p.m., leave having been granted by the Court to reopen plaintiff's case, a copy of Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax was admitted in evidence as Plaintiff's Exhibit "F," marked and ordered filed.

Argument was then had by respective counsel on the motion to dismiss.

At 3:50 p.m., the Court ordered that this case be continued to Thursday, December 19, 1946, at 2 p.m. for further hearing. [58]

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[Title of District Court and Cause.]

From the Minutes of the United States District Court for the District of Hawaii

Thursday, December 19, 1946

On this day came the plaintiff herein with Mr. Shiro Kashiwa, his counsel, and also came Mr. Edward A. Towse, Assistant United States District Attorney, counsel for the defendant herein. This case was called for further hearing.

Following further argument by respective counsel, motion to dismiss was granted by the Court.

Exceptions were noted by Mr. Kashiwa to the Court's ruling. [59]

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[Title of District Court and Cause.]

From the Minutes of the United States District  
Court for the District of Hawaii

Thursday, January 16, 1947

On this day came Mr. Shiro Kashiwa, counsel for the plaintiff herein, and also came Mr. Edward A. Towse, Assistant United States District Attorney, counsel for the defendant herein.

The matter of appeal, amount of bond pending appeal, and proper steps to be taken on appeal were discussed before the Court.

Form of Judgment was presented to the Court, signed, and ordered to be placed on file. [60]

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[Title of District Court and Cause.]

From the Minutes of the United States District  
Court for the District of Hawaii

Friday, January 17, 1947

On this day came Mr. Edward A. Towse, Assistant United States District Attorney, and also came Mr. Shiro Kashiwa, counsel for the plaintiff herein. This case was called for hearing on motion to stay collection of taxes during pendency of the appeal and for setting amount of bond as required under Rules of Civil Procedure.

Following argument by respective counsel, the Court ordered that bond as required by Section 62(c) of the Rules of Civil Procedure for the District Courts of the United States be waived.

The Court further ordered that during pendency of the appeal in this cause, the plaintiff, with a written consent of his wife, deposit with the clerk of court, Certificate of Title No. 35,165 issued by the Land Court of the Territory of Hawaii, and that the Collector of Internal Revenue be enjoined and prohibited from collecting the taxes as assessed during said pendency. Orders to that effect to be signed upon presentation. [61]

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In the United States District Court for the  
Territory of Hawaii

Civil No. 733

MITSUKIYO YOSHIMURA,

Plaintiff,

vs.

FRED H. KANNE, U. S. Collector of Internal  
Revenue,

Defendant.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S. District Court, Honolulu, T. H., on December 16, 1946, at 2:00 o'clock p.m.,

Before

Hon. J. Frank McLaughlin, Judge.

Appearances:

Shiro Kashiwa, Esq.,

Appearing for the Plaintiff;

Ray J. O'Brien, Esq.,

United States Attorney, District of Hawaii,  
appearing for the Defendant;

Edward A. Towse, Esq.,

Assistant United States Attorney, District  
of Hawaii, appearing for the Defendant.

## PROCEEDINGS

The Clerk: Civil No. 733, Mitsukiyo Yoshimura versus Fred H. Kanne, U. S. Collector of Internal Revenue, for hearing.

Mr. Towse: Ready for the Defendant, Collector of Internal Revenue.

Mr. Kashiwa: Ready for the Plaintiff, your Honor.

The Court: Very well. Before we begin, let me inquire of you gentlemen as to the length of time you think this will take to try; and, though it has been scheduled for afternoon sessions, in view of the fact that until Friday mornings will be available, whether or not beginning tomorrow you would like any morning sessions.

Mr. Kashiwa: I have a jury case in the morning sessions.

The Court: All right.

Mr. Towse: If the Court please, prior to proceeding at this time I have two motions to make on behalf of the Defendant, Collector of Internal Revenue. First, the Defendant moves and renews his motion to dismiss and asks leave of the Court for reconsideration thereof, based first as a matter of law that the claim upon which relief is sought here is not one which is cognizant of equitable relief which can be granted as prayed for; second, that the Plaintiff has not exhausted the administrative remedies and therefore has a plain, adequate and complete remedy at law, as enumerated in paragraph 15 of [64] page 7 of the answer; third, that the Plaintiff has not exhausted his remedies at law, as enumerated also on page 7 of the Defendant's answer, and therefore has a plain, adequate and complete remedy at law; fourth, that the nature of the tax in question is one upon income, and the Plaintiff neither attacks nor questions the legality of the tax as such; fifth, that the nature of the tax being one upon income, the Plaintiff does not attack the Constitutionality of either the assessment, the method of collection, or the taxing statute as such; and lastly and again, that the proceedings before the Court and the relief sought in the petition are proceedings in a suit to enjoin the Collector from the assessment and collection of the tax, which suit, the very nature thereof, is expressly prohibited by the terms of Section 3653 of Title 26 of the U. S. Code.

The Court: Do you wish to be heard further on those?

Mr. Towse: No. For the purpose of argument I will reiterate the grounds set forth upon the hearing of the motion to dismiss on this motion.

The Court: Do you wish to be heard?

Mr. Kashiwa: The only thing I can say, your Honor, is that there was an answer filed in this case, and I understood that we are going ahead to trial, and now counsel makes an oral motion. I do not have any more new authorities, any more than I cited, than I submitted at the hearing of the written motion. [65] The motion, I understand, the gist of it is the identical thing to what your Honor has ruled upon. And I will submit it on that.

The Court: Mr. Towse, first of all, what basis have you in the Rules of Civil Procedure for making the motion at this time?

Mr. Towse: In that the substance of the motion, your Honor, goes to the jurisdiction of the Court, based presently upon the pleadings. I appreciate your Honor's question and I perhaps properly made my second motion at this time, which I understand according to rules is open any time during a proceeding, that is, to move the Court for a judgment upon the pleadings as joined.

The Court: That is something different. Let's come to that separately.

Mr. Towse: Very well.

The Court: But on this I don't quite understand the procedural basis that you make the motion to dismiss and enlarge upon it. Your first and

last points seem to me to be identical, namely, that the Court has no jurisdiction, which is another way of saying that the relief sought is prohibited by this particular statute, on the ruling upon the motion to dismiss. The Court recognized the existence of this statute and called attention to the exception that the Court had made to this particular statute and placed this case within the [66] category of the exception, carved out of the statute by judicial decision.

As to your fourth and fifth points about the Plaintiff not contesting the legality of the tax or the Constitutionality of the law itself, the income tax law, those are new grounds to your motion. I don't quite see the application at this present time. And as to your point about the Plaintiff failing to have exhausted his administrative remedies, as well as his legal remedies, that is an argument that you made previously, and I still cannot see why, assuming the tax imposed to be completely illegal, why one has to suffer the exhaustion of those remedies simply to establish the illegality of the tax.

Mr. Towse: As a matter of law, as I understand it, your Honor, the proceedings in cases of that nature are directed against the statute or the taxing statute itself. Here the Plaintiff is seeking his equitable relief upon the grounds of a procedural enforcement aspect. The statute or the legality or Constitutionality or non-Constitutionality of the statute in itself is not attacked. It is the procedural aspect. This Plaintiff seeks relief and asks that an assessment be set aside on the grounds that one or

more of the procedural aspects of the assessment of the tax, which has not as yet been collected, be set aside.

The Court: Yes, I understand that. [67]

Mr. Towse: May I ask the indulgence of the Court to permit me to make my second motion and to rule on both? I was a little confused myself at the state of the pleadings.

The Court: Well, I will straighten out the record at this time by denying your motion to dismiss as renewed and as amplified. Now, let's have your second motion.

Mr. Towse: May the Defendant, for the record, note an exception to the Court's ruling?

The Court: Yes.

Mr. Towse: The Defendant moves, then, for judgment upon the pleadings as joined, and with reference thereto calls the Court's attention to page 6 of the Complaint, and particularly with reference to paragraph 13 thereof. the allegation of irreparable damage. Therein is alleged the following:

“That the plaintiff has not in his possession \$9,487.51 in cash and/or in real and personal property to make payment and claim a refund, and if the defendant is permitted to seize and sell the properties of the plaintiff. the plaintiff would be irreparably damaged.”

The Plaintiff in other parts of the complaint alleges engagement in the service station business as the sole means of support and income. Page 8 of the answer, if the Court please, an issue joined



therein, and paragraph 16 alleges the execution of an affidavit by the Plaintiff on October 14, 1946, wherein the Plaintiff alleges and declares his net worth, [68] sets out the items therein, not with reference to that particularly, however, but with particular reference to the note contained in the affidavit which recites that the Plaintiff

“Quit business at the end of August, 1946, because Government is fixing road in front of service station and there isn't any more business. Rent of \$150.00 per month can't be met. The service station must be raised to meet the new road level or else there will be no business. If raised by landlord, he says rent will be \$200.00 per month.”

I submit, your Honor, in support of the motion for judgment on the pleadings that this voluntary termination of the business of this Plaintiff, by that very fact, takes this case upon the pleadings out of the one and only ground of jurisdiction which this Plaintiff can invoke to seek the aid of this Court, in that it removes it from the class of extraordinary and exceptional circumstances. The inability to pay in itself, as I understand the cases, is not the basis of jurisdiction.

Now, upon the motion to dismiss, the Court found among other things extraordinary and exceptional circumstances. The financial inability of the Plaintiff to meet the assessment or the subsequent demand and notice for the tax, I submit, if your Honor please, upon the issue joined here shows

that this Plaintiff cannot suffer irreparable damage. He has himself voluntarily abandoned a business by his own statement, and that [69] fact is reflected, if the Court please, on the face of the pleadings. And that, in conjunction with the very rule that inability to pay cannot be invoked as the basis of jurisdiction for a suit to enjoin the collection of a tax. I submit, if your Honor please, that that is a matter of law and on the face of the pleadings warrants the granting of the motion for judgment on the pleadings as to this Defendant.

Mr. Kashiwa: I don't know whose pleadings he is talking about, but his recital about the store not operating and all that, that's from his own pleadings, that's all in the answer. And I don't know why he alleged those facts in the answer. He has denied certain facts in my pleadings, my original claim, and he has all these additional facts in his answer. But I don't see where that is any ground for dismissal. That hasn't been proved. You can't add those things on and then say that the case should be dismissed. I think this case should be tried on the merits. And that argument, if it's any argument at all, could come at a later stage. I don't know what the exact nature of this answer is. It states, it denies certain facts, it admits certain facts, and it adds on a lot of more facts, which of course we haven't answered to your answer at all. There is no question of that.

The Court: Nor is it allowed under the rules.

Mr. Kashiwa: And I don't see Mr. Towse's point, that is, he has alleged certain facts which we

do not at any time allege [70] in our complaint. And this answer, what the material portion is, is just a denial of our allegations or the admission of allegations. The rest of it is just extraneous, that's all.

Mr. Towse: The affidavit is a new matter.

The Court: Have you got your Civil Rules there? (Mr. Towse hands book to the Court) You base this motion, Mr. Towse, on Rule 12-B?

Mr. Howse: Yes, your Honor.

The Court: And H. Specifically, that there is a failure to state a claim upon which relief can be granted?

Mr. Towse: Yes, your Honor.

The Court: Well, that is in the nature of an old-fashioned demurrer, isn't it, that the complaint does not allege sufficient facts to constitute a cause of action?

Mr. Towse: In that also it goes to the very point of jurisdiction, your Honor, as I interpret the rules; the statute being an express prohibition of suits of this nature. There is only one recognized exception.

The Court: Yes, but on such a motion can I consider what you have alleged on your answer; isn't the motion to be tested by the four corners of the complaint?

Mr. Towse: I believe so, your Honor. The answer has verified Exhibit "A" attached to the answer, is attached to the heading of new matter. And it just happens to be an affidavit. And as I understand it, it is incontrovertible. In [71] other

words, your Honor, in June of this year this Plaintiff invoked the aid of this Court, and on October 14th the very basis on which he asks relief from the Court no longer exists; the pleadings themselves show that there is no further extraordinary or exceptional circumstance that warrants the jurisdiction of the Court. The face of the pleadings reflect it, I submit, your Honor.

Mr. Kashiwa: Your Honor, he refers to pleadings but he includes his answer, not the complaint, his answer. He alleges certain facts in his answer. Now, he should have properly brought that instead of stating the answer; on anything to abate the action he should have stated that in a separate motion before this Court. Now, it seems to me that it is very unfair. In fact—

The Court: Excuse me just a moment.

Mr. Kashiwa: Counsel could have gone ahead and stated in his answer that the taxes have all been paid by Mr. Yoshimura, and there is no issue at all. For example, he could have stated that and I wouldn't have had any chance to attack that. Then the question would be moot. The trouble with his argument is that he is stating facts which he extraneously stated in his answer. There is no necessity of my disputing the facts stated in his answer, your Honor.

The Court: In other words, he is lifting himself by his own bootstraps. [72]

Mr. Kashiwa: That's the way I look at it.

The Court: Well, let me take a few minutes off the record in this case to find out if we can't make

an arrangement on these other cases which Mr. Patterson is interested in.

(Off the record.)

The Court: I understand very clearly what you are driving at, Mr. Towse, but I am not inclined to think that at this particular time I can grant judgment upon the pleadings, especially where to arrive at that conclusion would involve taking your pleadings as containing undisputable allegations, as well as the Plaintiff's. I don't think that I can do that.

Mr. Towse: May I be permitted to make a brief showing by calling the Plaintiff to the stand and verifying the affidavit, your Honor? That will clear the evidence, if counsel seems to object to it.

Mr. Kashiwa: I certainly object.

The Court: It still wouldn't alter his complaint.

Mr. Towse: Very well, your Honor.

The Court: I am going to deny your motion on the judgment for the pleadings.

Mr. Towse: For the purpose of the record, may the Defendant have an exception to the Court's ruling?

The Court: Yes. Very well, we may now proceed with the trial. Your opening statement.

Mr. Kashiwa: Your Honor, I believe that an opening [73] statement is not necessary. The pleadings show what the facts and issues are. There is a denial by counsel. If your Honor wants any sort of a statement—

The Court: I want an outline of what you

expect to prove under this complaint, so I can follow what you are about to establish.

Mr. Kashiwa: At this time may the rule be invoked as to witnesses?

The Court: Very well. All persons in the courtroom who are scheduled to be called as witnesses for either of these parties please step outside of the courtroom and beyond the hearing of that which transpires in the courtroom, with the exception of the Plaintiff himself; and the Government may have one person stay with its attorney to assist him.

Mr. Kashiwa: My witnesses? I don't know about the other witnesses.

The Court: It applies to both sides.

Mr. Towse: Yes, your Honor.

Mr. Kashiwa: Briefly, the facts in this case are, Mr. Yoshimura, the petitioner in this case, ran a little service station business at Waiau. That's in between Pearl City and Aiea. He ran a little service station, a Shell service station, on the makai side of the road. He has been engaged in business for a number of years. These are '41, '42 and '43, as far as the taxes are concerned. In '44 or early '45, certain of the [74] tax officials of the Federal Government went down there and inspected his books. And I will show that there were certain representations made by the officials, as alleged in the complaint, which were improper, and that he was later taken to the tax office and made—not made but was assigned under certain circumstances which I will show were not proper—certain criminal confessions. And then the matter was left in

that state, circumstance, until a later time in 1945 when another group of three tax officials went down there, and Mr. Yoshimura informed them that the books were over at the Young Hotel building, and then they asked him whether he had a lawyer and he said yes, and he knew of a lawyer, that he was going to get that lawyer, and my name was mentioned. And as a result of that, he received a telephone call from the Kahumanu school, where the tax office was then located, and I went up to the office and appeared as counsel for Mr. Yoshimura, and I was supposed to hear from them at a later time.

Now, then, another group of officials from Mr. Glutsch's office went down, from Mr. Glutsch's office in the Young Hotel building, went down to Mr. Yoshimura's office, this time with an 870 waiver. And through certain representations the Defendant signed that. And after that, immediately after that, the Defendant came to my office and I went up to Mr. Glutsch's office trying to get that form back, the waiver form 870. A copy of that is in the complaint. And I was informed that [75] that had already been mailed to the mainland, it was unavailable. And at a later date we received a letter from the Internal Revenue Office in Washington, D. C., that the tax amounted to about some nine thousand odd dollars. And later Mr. Kanne sent the second notice, demand for payment of tax amounting to something over and above nine thousand dollars. And in view of the facts alleged in the petition, we brought in this.

The Court: Very well. Call your first witness.

Mr. Kashiwa: I offer in evidence what is marked "Second Notice and Demand for Income Tax," for the years 1941, '42 and '43. This is a stamped copy delivered from the Collector of Internal Revenue to the respondent in this case. I offer this in evidence.

Mr. Towse: No objection.

The Court: Very well, the same may become the Plaintiff's exhibit.

The Clerk: Plaintiff's Exhibit "A". Are there three of them?

Mr. Kashiwa: Yes.

The Clerk: "A-1, A-2, A-3." That's for the years '41, '42 and '43.

(The documents referred to were received in evidence as Plaintiff's Exhibits "A-1", "A-2" and "A-3.")



PLAINTIFF'S EXHIBIT A-1

Form 21 A IT:B&W:TN

Treasury Department  
Internal Revenue Service  
Revised Sept. 1941

Second Notice and Demand for Income Tax

Date	Charge	Last Credit	Unpaid Balance	Account Number and Remarks
	1021.94			
Int. ....	248.79			1941 IT
Pen .....	510.97	.00	1781.70	Apr. 5 519000/46

Mitsukiyo Yoshimura  
Pearl City  
Honolulu, T. H.

Date of First Notice: 4/18/46.

Date of This Notice: 5/20/46.

The records of this office indicate that you are delinquent in making payment of the unpaid balance of tax and/or interest shown above.

It therefore becomes my duty to demand that this unpaid balance be paid, together with interest computed at the rate of 6 per cent per annum from the date prescribed for its payment to the date of payment, which interest has been incurred by failure to pay the unpaid balance within the prescribed time. If payment of the amount due the Government is not received within ten days from the date of this notice and demand, the Law pro-

vides that collection with costs may be made, if necessary, by seizure and sale of property.

To Insure Proper Credit, Return This Form With Remittance to the Collector of Internal Revenue at .....

Unpaid balance ..... \$1781.70

Delinquency interest computed from 4/18/46 to  
5/30/46 ..... 12.42

Total unpaid balance and interest thereon due as of  
the date indicated above..... \$1794.12

Mitsukiyo Yoshimura

Apr. 5 519000/46

F. H. KANNE,

Collector of Internal

Revenue.

Admitted 12/16/46.

PLAINTIFF'S EXHIBIT A-2

Form 21 A IT:B&W:TN

Treasury Department  
Internal Revenue Service  
Revised Sept. 1941

Second Notice and Demand for Income Tax

Date	Charge	Last Credit	Unpaid Balance	Account Number and Remarks
	1792.25			
Int. ....	328.79			1942 IT
Pen .....	896.13	.00	3017.17	Apr. 5 519002/46

Mitsukiyo Yoshimura  
Pearl City  
Honolulu, T. H.

Date of First Notice: 4/18/46.

Date of This Notice: 5/20/46.

The records of this office indicate that you are delinquent in making payment of the unpaid balance of tax and/or interest shown above.

It therefore becomes my duty to demand that this unpaid balance be paid, together with interest computed at the rate of 6 per cent per annum from the date prescribed for its payment to the date of payment, which interest has been incurred by failure to pay the unpaid balance within the prescribed time. If payment of the amount due the Government is not received within ten days from the date of this notice and demand, the Law provides that collection with costs may be made, if necessary, by seizure and sale of property.

To Insure Proper Credit, Return This Form  
With Remittance to the Collector of Internal Revenue at .....

Unpaid balance .....	\$3017.17
Delinquency interest computed from 4/18/46 to 5/30/46 .....	21.04
<hr/>	
Total unpaid balance and interest thereon due as of the date indicated above.....	\$3038.21

Mitsukiyo Yoshimura

Apr. 5 519001/46

F. H. KANNE,  
Collector of Internal  
Revenue.

Admitted 12/16/46.

PLAINTIFF'S EXHIBIT A-3

Form 21 A IT:B&W:TN

Treasury Department  
Internal Revenue Service  
Revised Sept. 1941

Second Notice and Demand for Income Tax

Date	Charge	Last Credit	Unpaid Balance	Account Number and Remarks
	3510.81			
Int. ....	433.42			1943 IT
Pen ....	1755.41	.00	5699.64	Apr. 5 519002/46

Mitsukiyo Yoshimura

Pearl City

Honolulu, T. H.

Date of First Notice: 4/18/46.

Date of This Notice: 5/20/46.

The records of this office indicate that you are delinquent in making payment of the unpaid balance of tax and/or interest shown above.

It therefore becomes my duty to demand that this unpaid balance be paid, together with interest computed at the rate of 6 per cent per annum from the date prescribed for its payment to the date of payment, which interest has been incurred by failure to pay the unpaid balance within the prescribed time. If payment of the amount due the Government is not received within ten days from the date of this notice and demand, the Law provides that collection with costs may be made, if necessary, by seizure and sale of property.

To Insure Proper Credit, Return This Form With Remittance to the Collector of Internal Revenue at .....

Unpaid balance .....	\$5699.64
Delinquency interest computed from 4/18/46 to 5/30/46 .....	39.74
	_____

Total unpaid balance and interest thereon due as of the date indicated above..... \$5739.38

Mitsukiyo Yoshimura

Apr. 5 519002/46

F. H. KANNE,  
Collector of Internal  
Revenue.

Admitted 12/16/46.

Mr. Kashiwa: I offer in evidence a letter from the [76] Treasury Department, Washington, D. C., by the head of the division, J. W. Carter, with regard to the amount of the tax due in this matter.

Mr. Towse: To that we object, your Honor, on the ground that it is merely a statement and not a demand for the payment of an assessment or collection, and as immaterial to the issues in this case. The statement is already in.

Mr. Kashiwa: I'll withdraw the offer.

The Court: Very well.

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### MITSUKIYO YOSHIMURA,

a witness in his own behalf, being duly sworn, testified as follows:

Mr. Kashiwa: Before I go ahead, it is my understanding that counsel is going to stipulate that Mr. Kanne, the respondent in this case, is a resident of the Territory of Hawaii and his official capacity is that of the Collector of Internal Revenue within the Territory of Hawaii, and that he admits that the tax bill, Exhibit "A", three Exhibit "A's", were sent to the Petitioner, and that his duties are to collect all income taxes due in the Territory of Hawaii.

Mr. Towse: I so stipulate.

#### Direct Examination

By Mr. Kashiwa:

Q. Will you give us your full name, your full name, so we can hear it? Sit down.

(Testimony of Mitsukiyo Yoshimura.)

A. Mitsukiyo Yoshimura. [77]

The Court: How do you spell that?

The Witness: M-i-t-s-u-k-i-y-o, Y-o-s-h-i-m-u-r-a.

Q. You are the person suing in this case?

A. Yes.

Q. Speak out loud so we can all hear. This man has to take the notes down. How old are you?

A. Forty-two years.

Q. When did you come to the Territory of Hawaii? A. January, 1916.

Q. How old were you then?

A. Ten years old.

Q. You are a citizen of what country?

A. Japan.

Q. Were you born there? A. Yes.

Q. You have never been naturalized as a United States citizen? A. No, sir.

Q. Now, when you came here, how old were you?

A. Ten years old.

Q. At that time, how much schooling did you have in Japan?

A. Five years in the elementary school.

Q. Did they teach any English in that elementary school? A. No, sir. [78]

Q. Then after you came to Hawaii, did you go to school here? A. Yes, sir.

Q. In the English school? A. Yes, sir.

Q. Will you tell us what schools you went to?

A. First I went to Trinity Mission School for two years. Later they put me to Royal School and I stayed there another four years.

(Testimony of Mitsukiyo Yoshimura.)

Q. Now, Trinity Mission School, is that an elementary school?

A. Well, it wasn't an elementary school, although they start me off with A-B-C and they taught me about two years and they took me up to the Royal School and put me in that school.

Q. What grade did you complete at the Royal School?

A. Sixth grade.

Q. Did you go to any more schools after that?

A. Well, since my father got sick, I can't continue any more school and I asked, I beg my father to put me in a trade school, which was Territorial Trade School, and learned my business there for two years.

Q. What is your business?

A. Automobile mechanic.

Q. Now, at the trade school, what was the main course [79] of study?

A. Just tearing down automobiles and putting them back.

Q. Then after that, what did you do after graduating from the trade school?

A. Then I started help my father farm for a while. Then I went to work for somebody else.

Q. Who was that?

A. Wahiawa Garage in Wahiawa.

Q. As a mechanic?           A. Yes, sir.

Q. And what did you do after that?

A. Then I left there and I worked at Highway Garage at Pearl City.



(Testimony of Mitsukiyo Yoshimura.)

Q. And then?

A. Then I left there and I started my business at Waiau.

Q. When did you start your business, what year?      A. 1933.

Q. Now, you mentioned Waiau. Will you tell us where Waiau is?

A. Waiau is located where the Hawaiian Electric power plant is, between Pearl City and Aiea in the makai side of the road.

Q. That's where your service station is?

A. Yes.

Q. Any particular name to the business? [80]

A. Well, under Yoshimura Service Station.

Q. While you were operating the service station since 1933, did you have any other business?

A. No, sir.

Q. Did your wife have any other business?

A. No, sir.

Q. While you were operating the service station there, who handled your tax returns?

A. Mr. C. B. Farm.

Q. Do you know what that C stands for?

A. Well, I used to call him Chubui, C-h-u-b-u-i.

Q. Chubui Farms?      A. Yes.

Q. What nationality?

A. He was a Chinese.

Q. What was his occupation?

A. Well, it seems to me he used to work for some firm before. I don't know exactly where. He

(Testimony of Mitsukiyo Yoshimura.)

must have left there some time ago and he used to take care of my books for me.

Q. Did he take care of only your books or other people's books, too?

A. No, he used to tell me he was taking care of some other people, too.

Q. Now, is he living or dead now?

A. He's dead. [81]

Q. About when did he die?

A. Well, I don't exactly remember. About some-time in 1945, I think.

Q. Now, did Mr. Farm take care of your returns up to the time he died?      A. Yes, sir.

Q. Who made your 1941 tax return?

A. Mr. Farm.

Q. And your '42 tax return?

A. Mr. Farm.

Q. Your '43 tax return?

A. Mr. Farm.

Q. I'm speaking about the Federal income tax.

A. Mr. Farm.

Q. Did he make your other tax returns, the Territorial tax returns?

A. Every tax of any kind.

Q. How about the gross income tax?

A. He did file.

Q. Now, have you got that envelope there? (Witness hands an envelope to Mr. Kashiwa.) Will you explain how you kept your daily books?

A. Well, I had a cash register which is a type of

(Testimony of Mitsukiyo Yoshimura.)

bookkeeping system, and I have a sheet that it registers every day. [82]

(Mr. Kashiwa hands a sheet of paper to Messrs. Glutsch and Towse.)

Q. Now, I am going to show you this paper, marked 2-16-42. Will you explain where that paper came from? (Handing a sheet of paper to the witness.)

A. This is my sheet.

Q. What are those figures on it?

A. Well, all this figures—this is all the daily cash sales. And the last column here is which receipts on account is registered here, and totals up at the end of the day, registers here.

Q. Well, anyway this is the sheet inserted in the machine? A. Yes.

Q. And you tear this out at the end of the day?

A. That's right.

Mr. Kashiwa: Do you have any objection to this going in evidence?

Mr. Towse: I don't quite follow the purpose, your Honor. I don't like to object prematurely, but as I understand the Court has already ruled that it is not going into the amount of any assessment. If this is for the purpose of showing the correctness or alleged incorrectness of any tax assessed, then I object to it. If it is for some method of bookkeeping, of course I can't, if it is material.

Mr. Kashiwa: This is a method of bookkeeping.

Mr. Towse: If that is the purpose for which it is sought to be put in.

(Testimony of Mitsukiyo Yoshimura.)

The Court: Is that the purpose for which you are utilizing it?

Mr. Kashiwa: All this testimony, this is to corroborate his testimony that he had a bookkeeping machine, a bookkeeping cash register machine which registered these amounts. My purpose in showing that is that he knew that the amounts that were in the tax returns were correct and that he made the returns based on these figures. I am not going to dispute the figures. Remember, this is the only sheet I am going to introduce. But I want to lay the general outline of how it was done, your Honor, the daily entries, and how they were wound up at the end of the year.

The Court: In other words, that's an illustration of how the cash register worked?

Mr. Kashiwa: Yes, your Honor.

Mr. Towse: What is the relevancy of that to the prayer for injunction, your Honor? I don't quite follow it. There is an allegation that for those years——

Mr. Kashiwa: Well, it is relevant.

The Court: Just a minute. Let him finish.

Mr. Towse: There is an allegation that each such return represented the true net profit. I would submit that the returns as filed under oath are the best evidence of this, not any system of bookkeeping that is used. We can't go and explore [84] a system of bookkeeping in a service station in this manner. We'll be here for three weeks.

Mr. Kashiwa: I will later show that there were

(Testimony of Mitsukiyo Yoshimura.)

certain discrepancies when the officers visited the premises with regard to these sheets, and although he knew that these returns were based on these sheets, there may have been some error, and the officer who went to investigate pointed out one error, and that was one of the reasons why he signed this criminal statement. It was a minor mistake.

Mr. Towse: That's the very point, if your Honor please. We are going now into a discrepancy in the amount of computation of the tax, which I submit is definitely irrelevant to this. In fact, the Court has so ruled on the motion to dismiss.

Mr. Kashiwa: My argument is this, your Honor, that just for a little mistake in a tax return a person is not subject to any criminal prosecution. It must be an intentional and wilful mistake. And this officer who went down there knew that it was. He should have known that it was a very small mistake. But he picked on this little sum and really got the defendant worried. The net tax on that sum would not have been more than ten cents.

Mr. Towse: If the Court please, in answer to that, counsel has hit upon the very crux of the entire thing. Are we going into a fishing expedition to determine why or when, if not up [85] to the present time, this defendant has not been criminally prosecuted? And that's the purport of this evidence which is being offered, I submit. If your Honor please, the Government has six years to determine if this defendant shall be prosecuted,

(Testimony of Mitsukiyo Yoshimura.)

since counsel has opened up the subject, and that six years, as of the date hereof, on the date of the answer filed, has not as yet expired. I say we cannot go into that field, your Honor. It is not relevant.

Mr. Kashiwa: I cannot see how this can be a fishing expedition, your Honor. This evidence is in my hands. It is not the Government's. I am not trying to get a secret out of this. I am just trying to make the case plain for your Honor, to show your Honor that there were inducements made in this case which were improper. And if that ever happens to be part of the case of the prosecution, that's the prosecution's hard luck.

Mr. Towse: Counsel has said and stated that there is a discrepancy. That's my very point, your Honor. He says that there has been a discrepancy. Now, it takes two to make an argument. We have to come in and answer to that and show the results of the investigation, criminal or civil. I say no, your Honor. Whether or not there was a discrepancy in computation is not a part of the proceedings on this injunction, your Honor. That's the very purport of the statute, permitting the suit at law. Then the Court goes into it and determines it. But it does not pray for an injunction. [86]

The Court: I don't think we'll go into the computation of the tax in a suit of this nature.

Mr. Kashiwa: I'm not going into the computation of the tax. I don't care what the figures are

(Testimony of Mitsukiyo Yoshimura.)

here. I offer to show this as one of the several sheets, the daily sample sheets, what he did with his business and how the whole thing was wound up at the end of the year.

The Court: I'm going to allow it to come into evidence for the purpose of illustrating the type of bookkeeping this machine, this cash register, did, but for no other purpose.

Mr. Towse: For that sole purpose, your Honor?

The Court: For that sole purpose. I don't know where it will get us.

Mr. Towse: May the defendant note an exception to the Court's ruling?

The Court: You may have an exception.

The Clerk: Plaintiff's Exhibit B.

(The document referred to was received in evidence as Plaintiff's Exhibit B.)





(Testimony of Mitsukiyo Yoshimura.)

The Court: Proceed.

By Mr. Kashiwa:

Q. Now, with relations to this sheet here,—these are the daily sheets—now, how did you make up your books, Mr. Yoshimura?

A. I just transferred that to my other book. [87]

Q. Yes. And?

A. And at the end of the year I totaled up.

Q. Yes?

A. And when I filed in the reports for taxes, Mr. Farm comes over and I let him have the whole works, and he took care of everything for me.

Q. He did that each year?

A. Every month, every year.

Q. At the end of the year for the net income tax?

A. Yes, sir, everything.

Q. For '41, '42 and '43?

A. Yes, sir.

Q. Do you remember signing the returns for those years?

A. Yes.

Q. And did the amounts correspond to the amounts in the books? I mean the total profit.

A. Well, exactly I don't remember—

Mr. Towse: Pardon me again, your Honor. I don't mean to object but I submit if we are going into the books again, that the books are the best evidence. This defendant can't testify to something that he signed in '41, that they were the same figures as they were in the set of books that aren't here in court.

The Court: Isn't that objection good?

(Testimony of Mitsukiyo Yoshimura.)

Mr. Kashiwa: Well, the books are in your hands, Mr. Towse. [88]

Mr. Towse: Very well. It's your case. You filed for an injunction. I didn't.

Mr. Kashima: I'll subpoena your books.

Mr. Towse: We are again going into the fishing field on the tax, which I submit again is irrelevant.

The Court: Proceed.

By Mr. Kashiwa:

Q. All right, now, did anyone investigate you for taxes, Mr. Yoshimura?

A. When was it?

Q. Did anyone—answer that question Yes or No—did anyone investigate you for Federal taxes?

A. Yes, sir.

Q. Who was it?

A. Well, one man I remember, Mr. Irey, and two other men came.

Q. Now, about when was that?

A. Well, I don't quite remember but——

Q. In '45 or '44?

A. Some time in 1944, I think.

Q. You mentioned Mr. Irey? A. Yes.

Q. And two other men? A. Yes.

Q. What are the names of the other two? [89]

A. Well, I know one man which Mr. Irey called him Mr. Latte, and the other person I don't remember.

Q. You don't remember his name?

A. No, I don't.

Q. Where did they come to?

(Testimony of Mitsukiyo Yoshimura.)

A. I beg your pardon?

Q. Where did they investigate you?

A. Right in my store.

Q. At Waiiau?           A. Yes, sir.

Q. Will you tell us exactly what happened on that day?

A. One day three of them came into my store, and this man Mr. Irey showed me his card and told me that his name was Mr. Irey, Federal investigator.

Q. Federal what?           A. Investigator.

Q. Did he tell you what division he was from?

A. No, he did not. And he asked me to show my books so I show my books, what I had. He asked me if I have any cash money. Well, I had a few changes——

Q. What do you mean by “changes?”

A. Well, changes in the cash register. He wants me to open it. So I open it for him. He wants to see everything. The house was all open anyway. I wasn't living in there, just doing business. And they went all over the house and searched [90] for my books and everything and asked me if I had two sets of books. I didn't know what was meant by two sets of books. I asked Mr. Irey what is two sets of books. He said if I have another copy of books. I said I only have one copy. Then he asked me where I live. So I told him I'm living up at Aiea house number 17, New Mill Camp. Then Mr. Irey and another person went to my house where I used to live.

(Testimony of Mitsukiyo Yoshimura.)

Q. Just a moment, now. You said you lived at Aiea Camp. How far was that from your store?

A. Just about three miles.

Q. Three miles? A. Yes.

Q. And who lived over at that place three miles away?

A. My mother-in-law there. She works at the plantation and she has a house. In 1942 I was evacuated from there.

Q. From where? A. Yes.

Q. From where?

A. From Waiiau, at my business section.

Q. Now, prior to 1942, prior to your evacuation, where were you living? A. At——

Q. Before you evacuated, where were you living?

A. Right in that store, right in the back of it.

Q. Then in '42 you evacuated? [91]

A. Yes, I had orders to evacuate, and I didn't have any house to go so I asked my mother-in-law, so I went up there and I lived there for four years.

Q. And that's the house you directed Mr. Ireya to? A. Yes.

Q. At the time Mr. Ireya went there, who was at the house.

A. Just my wife and little boy.

Q. Did you go with Mr. Ireya?

A. No, sir. I sit back in the store and take care of the store and——

Q. And who was there?

A. Mr. Latte was checking up the books and he was still looking around for them, and——

(Testimony of Mitsukiyo Yoshimura.)

Q. Just a moment, now. With regard to your books, you testified that when they came in they requested for the books. Did you show your books to them?      A. All my books, all what I had.

Q. What do you mean by all that you had? Where were the rest of them?

A. I didn't have any of them.

Q. Why?

A. I only had one set of books which I showed them. They collect everything.

Q. Now, how about your vouchers, did you have all your [92] vouchers?

A. That I don't understand. What does that mean?

Q. Bills.

A. Bills? Yes, I had some, and some were in my desk drawers, and my desk was—belong to a Captain Walker which he was taking charge of balloon barrage at that time—came and asked me to loan him my desk.

Q. When was this, nineteen what?

A. It was early part of 1942. And I had all those papers and what not in there, but I was so scared—they sent about seven of them soldier boys and took my desk and they used it. When they returned the desk, there was nothing in my drawer. It was all emptied. And while Mr. Irey was away, Mr. Latte off and on questioned me and asking me if I am an alien and getting me kind of scared telling about these people going to tax jail for tax evasion and what not, and a lot of people interned,

(Testimony of Mitsukiyo Yoshimura.)

and I was very much scared myself to leave my children behind me and being interned and what not.

Q. At that time how many dependents did you have?

A. Well, exactly I can't count only because——

Q. How many of your own children did you have? A. I had four for myself.

Q. Your oldest child was how old?

A. A little over two years now.

Q. The biggest child? [93]

A. The oldest, 11 years old.

Q. At that time, how old was he at the time Mr. Latte came up to your house?

A. I think it was around 9 years old, I think.

Q. And you had four at that time?

A. Yes, I had four.

Q. And did you have any other dependents?

A. Well, all these years I have been supporting my brother's family.

Q. What's wrong with your brother?

A. My brother had a goiter operation and it didn't turn out right and he's an invalid now and hasn't worked for the last 13 or 14 years, which he has seven children. Well, at that time he didn't have any income at all. I have to look over and I helped him all the way through, which if I didn't help he'll have to go under the Government care. So I struggled along and I support them.

Q. All right, now, let's go back to your conversation with Mr. Latte. Did you have any other conversation with him?

(Testimony of Mitsukiyo Yoshimura.)

A. Well, Mr. Latte picked up on a book which I made a little mistake and he always——

Q. What was that particular item?

A. Well, I have a little figure that was mis-entered in a book.

Q. How much did that involve? [94]

A. That was——

Mr. Towse: I object again, your Honor, to this line of questioning, that the books are the best evidence if available, if we are going into the computation on an error again which is not a part of these proceedings.

Mr. Kashiwa: It is not a computation. It's a little item.

The Court: It was as to what the mis-entry was. Of course, the best evidence is the books in which it was made. But for the present purposes the witness may describe it. But if it becomes a direct issue, then the books will have to be produced. The witness may answer the question.

Mr. Kashiwa: All right. May I have that question?

(The reporter read the last question.)

A. Exactly \$150.

Q. What was the misstatement?

A. Well, he told me that was not listed in my book which I showed in the daily sheet. I'm pretty sure that it must be in it, but he keep on pressing me that that mistake wasn't in the book. And they always telling me that if I do such things and what

(Testimony of Mitsukiyo Yoshimura.)

not I'll be interned and what not, and it got me very scared.

Q. Did you have a safe on the premises?

A. Yes, I had. They asked me to open it and I opened it wide. They looked over everything. [95]

Q. Did they find any money in the safe?

A. Well, small changes, that's about all I had.

Q. Now, you mentioned then Mr. Irey and the other man went away. How long were they away?

A. Probably about 45 minutes, I think, and then they came back. And Mr. Irey himself didn't say anything. Mr. Latte told me again about interning and what not. And they picked up all what I had and picked up what they need, I suppose, and they left the store.

Q. What do you mean "they picked up?" Picked up what?

A. The books I had and the daily sheets. And when——

Q. Go ahead.

A. ——when they leave the store, Mr. Irey told me to come up to the Young Hotel building.

Q. Did he leave anything with you?

A. Yes, he did. He bring out a piece of paper and he wrote his name and he gave me the room in the Young Hotel.

Q. I show you this little piece of paper saying "H. Irey," signed "H. Irey, Special Investigator." (Showing a small piece of paper to the witness.)

A. Yes, this is it. He told me to come Monday morning at 9:00 a.m. Monday morning I was tak-



(Testimony of Mitsukiyo Yoshimura.)

ing care of all this milk from the Dairymen's and taking care of the children, and I told him I can't go on Monday morning and I can go on Tuesday. He says that's O.K. to come over Tuesday nine o'clock to the [96] Young Hotel building. So I went up there.

Mr. Kashiwa: I offer this in evidence, your Honor. (Handing the small piece of paper to Mr. Towse.)

Mr. Towse: Who wrote this "Tuesday?"

The Witness: "Tuesday" I wrote this out. I asked Mr. Irej, I can't go Monday because I'm taking care of the children's milk, so he told me to come Tuesday. So I cancelled that Monday and put Tuesday on there.

Mr. Kashiwa: I offer this in evidence, your Honor.

The Court: Just a minute. I hear no objection but I can't see what it particularly establishes. I hear no objection but I can't see what that slip of paper establishes.

Mr. Kashiwa: Well, I don't know whether they are going to deny that. He was asked to come up to the Young Hotel building, and all this is going to follow up. It may be material.

The Court: All right. It may become an exhibit.

The Clerk: Exhibit C.

(The paper referred to was received in evidence as Plaintiff's Exhibit C.)



Civ. 733 Plaintiff's Exh  
"C" admitted  
12-16-46

560 Young Hotel

12/17/46

Monday - 9 AM

Tuesday

H. Gray

Special Investigator



(Testimony of Mitsukiyo Yoshimura.)

Q. (By Mr. Kashiwa): Now, in response to that note, Exhibit C, what did you do?

A. Well, that Tuesday morning I went to the Young Hotel building and——

Q. Young Hotel of this city, Honolulu? [97]

A. Honolulu, yes. And I went in a room and I waited there.

Q. What room?

A. Well, I think it was 560, Young Hotel building.

Q. Yes?

A. Then I sit there, wait for him. Then he came in. He told me to sit down, so I sat down, and he told me——

Q. You give us your complete conversation, what the conversation between you and Mr. Irey was from the beginning to the end, will you?

A. Well, then, Mr. Irey told me that I have to make a statement. I says, what kind of statement? Well, he says due to this tax that you have to make a statement. He told me to write out a statement. I didn't have much of education so I didn't know how to write a statement, so I told Mr. Irey about it. Then he picked out the pencil and he started to write something. Then he wrote it out, about half of the sheet, and he went and told me that I am defrauding the Government. So I didn't know what is meant by defrauding, so I asked Mr. Irey what is meant. Then he started to explain to me. But still I don't understand clearly. And he had a lady in that room and he was asking the lady how to ex-

(Testimony of Mitsukiyo Yoshimura.)

plain the word "fraud" and what not. But still I didn't understand very well. But he wrote it down and said, told me to sign it. So I told Mr. Irey I don't understand very well these things [98] and I don't want to sign it. But he says, you might as well sign your name here, and he says, your case will be very easy. So I signed the sheet of paper there. Then he told me I can go home. So I left.

Q. Did you see Mr. Irey again after that?

A. After? Yes. Some time after he came on the Oahu Railway bus all by himself and dropped over my place and asked me for another set of books.

Q. For what?

A. Another set of books. So I told him I haven't got any. What I had they took them all. So I told him I don't have any. Then he told me some people keep a second set of books in a car some times. I had my automobile right in the garage and I told him where I have my car. And he didn't go to the car, of course. He didn't look at it. Then he stood around the store about, around five or ten minutes. Then he caught the ride and come back to Honolulu.

Q. Was that the last time you saw Mr. Irey?

A. That was the last I saw—yes.

Q. All right, now, that paper you signed in Mr. Irey's office at the Young Hotel, do you know what it said?

A. Well, I don't understand clearly.

Q. Did he give you a copy?

(Testimony of Mitsukiyo Yoshimura.)

A. No, he did not. He just wrote out on a sheet of paper. [99]

Q. Was it typewritten or in longhand?

A. Longhand.

Q. Now, at the time you went up to Mr. Irey's office at the Young Hotel, did he have your books there in front of you?

A. No, he did not. He didn't show me any.

Q. Did you discuss anything with him with relation to your books?      A. No, he did not.

Q. Did he at that time tell you how much tax you owed to the Government?

A. No, he did not.

Q. All right, then, you testified last time Mr. Irey came down he asked for another set of books. Now, after that, did any other tax officials come to your house?

A. Came to the store, three of them came again.

Q. Same people?      A. No.

Q. Well, who were they?

A. I do not know because they didn't give me the name but just took out a wallet and showed me a card and put it back and put it in the pocket and said that they were from Internal Revenue.

Q. Now, what was your conversation with them?

A. Well, they told me if I have some more books, so I [100] told them that Mr. Irey and the other people took all that I had so I don't have any. Well, he told me, he says, this tax case, he force me to hire a lawyer. I says, why I have to hire a lawyer that I don't know, because I was kind of worried.

(Testimony of Mitsukiyo Yoshimura.)

I don't know how much the lawyer cost me. And I didn't have enough money to do things. And I told them about it and still they told me it's better for me to hire a lawyer. So I figured, I thought to myself when the war broke out and the Foreign Funds Control asked me to report and I went to Mr. Kashiwa's and that name came to my head again, so I came to Mr. Kashiwa and told him about it and asked him to do the work for me.

Q. Did you give my name to the tax investigators?  
A. Yes, told them Mr. Kashiwa.

Q. And did you get in touch with me?

A. Yes, I called on you on the telephone.

Q. All right, now, did you see these three people again yourself, these three investigators?

A. You mean the second group?

Q. Yes.  
A. I haven't seen them since.

Q. All right, now, after that, did any further tax officials come to see you?

A. Yes. After that two persons came and didn't mention the name, said they were from the Internal Revenue.

Q. What nationality were they? [101]

A. One was Chinese and another one was haole. And brought in about two sheets of paper which something is typed on, want me to sign for it. I don't understand clearly so I asked them to wait until tomorrow and see my lawyer, Mr. Kashiwa, if it's all right for me to sign the papers. But these two persons didn't give me any chance at all; no, he said, I have to sign right away, otherwise the



(Testimony of Mitsukiyo Yoshimura.)

boss would get mad, and told me that I might go in jail or get a big fine for it. They want to get the papers signed right away and they want to take them back. Of course, I didn't want to sign for it, which I don't understand very well. But they force me to sign for it so I sign it. Then the following morning I called up Mr. Kashiwa and told——

Q. Let's stop the story there, now. The paper you signed and gave to the two people, did you sign both sheets or one?           A. Both sheets.

Q. Both sheets?           A. Yes.

Q. All right, now, were there any dollars and cents figures in it?

A. No, nothing in it. It's just the words typed out and had some dashes on it but no dollars and cents on it.

Q. Now, the amount in this case, the tax requested payment is nine thousand, about nine thousand four hundred dollars roughly. Were there any figures of that nature written [102] on that paper?

A. No, sir. There is no figures on it.

Q. At that time did you in any way know that your assessment was going to be nine thousand dollars?           A. No, sir.

Q. Did they tell you?

A. They did not. They just show me the paper which I remember there's no dollars and cents on that sheet.

Q. When was the first time you discovered that you had to pay nine thousand dollars in taxes?

(Testimony of Mitsukiyo Yoshimura.)

A. Well, it may have come to me from the Internal Revenue registered, saying that amount was listed on it, and I brought the copy to Mr. Kashiwa.

Q. Now, you mentioned about these two Internal Revenue men coming to your place and you signed that form. Then the next day you came to my office?

A. Yes, because they didn't give me any chance at all.

Q. All right, now, what did you do after that? Did you go to see anybody? You came to my office, you remember?

A. Yes.

Q. Did you go to see anybody?

A. No, I did not.

Q. Now, you mentioned the nine thousand dollars tax bill. About how many months after that did it come to you after you signed this paper with the two boys? [103]

A. I don't exactly remember.

Q. How long approximately?

A. Oh, about six months, I imagine.

Q. All right. Now, let's go back to the first time Mr. Irej came to your place, Mr. Irej, Mr. Latte and the other man you testified. Now, about how many months after that did these three people come to see you? Remember you testified the second group of Revenue men came down?

A. Yes.

Q. How many months was that approximately in between?

A. About three or four months, I think.

Q. And then after that you testified that there was a Chinese man with a haole man came with

(Testimony of Mitsukiyo Yoshimura.)

the form. About how many months after that was that?

A. I don't exactly—somewhere around in 1945 sometimes, I think.

Q. You don't remember the exact date?

A. I don't remember.

Q. Do you remember putting the date in that form?      A. No.

Q. All you did to that form was just——

A. Just write my name.

Mr. Kashiwa: No further questions.

The Court: Cross-examination? [104]

Cross-Examination

By Mr. Towse:

Q. Mr. Yoshimura, Mr. Irej and these two other men came some time in 1944, is that right?

A. Yes, sometimes in 1944.

Q. First time?      A. Yes.

Q. What part in 1944, what month?

A. Well, I don't exactly remember, sir.

Q. Do you remember the day of the week?

A. No, I don't, sir.

Q. What part of the year was it, December or June or March or August?

A. I think somewhere around April or May, I think it was.

Q. April or May of 19——      A. 1944.

Q. Was martial law in effect then?

A. I beg your pardon?

Q. Was martial law in effect then in the Territory?

(Testimony of Mitsukiyo Yoshimura.)

Mr. Kashiwa: Your Honor, that's a matter of judicial notice.

Mr. Towse: No, your Honor. The complaint says that this man was afraid of being interned. I want to know if he knew that in April of 1944 martial law was in effect or if there was such a thing as a military governor who could put him in. [105] That's the very basis of the complaint, that he was forced by duress to do all these things. If he doesn't know whether martial law was in effect, how can he be subject to that?

Mr. Kashiwa: Well, I'll withdraw my objection if that is the purpose of it.

The Court: May I have that question again?

(The reporter read the last question.)

A. Well, that exactly I do not know, but when Mr. Irej and Mr. Latte came, he was always, Mr. Latte himself was always telling me that I would be interned and what not.

Q. What do you mean by "interned?"

A. Well, they told me they would lock me up.

Q. Who would lock you up?

A. Well, the Government.

Q. The who? A. The Government.

Q. What Government?

A. It was under the Federal Government.

Q. What Federal Government, the United States of America in Washington or the military government?

A. Well, I understand it's Federal Government of the United States.

(Testimony of Mitsukiyo Yoshimura.)

Q. The Federal Government of the United States?      A. Yes, sir.

Q. In other words, Mr. Ireys? [106]

A. Yes.

Q. And not the military government?

A. No.

Q. So you weren't afraid of the military government?

A. Well, it's not that I'm afraid of it but is the law violating which I done it or whatever it is—Mr. Latte always keeps telling me that either I would be in jail or I would be interned. And he always scared me.

Q. But you'd be interned?      A. Yes.

Q. By whom?

A. Well, he told me the Internal Revenue.

Q. That the Internal Revenue would intern you?

A. Yes.

Q. To where?      A. To where, I don't know.

Q. What for?

A. Saying that I'm cheating the United States Government and what not, which I don't remember doing it.

Q. Now, did he tell you that other Japanese alien residents of Hawaii were being interned?

A. Yes, sir.

Q. In large numbers?      A. Yes, sir.

Q. He told you that? [107]      A. Yes, sir.

Q. How big numbers?

A. Well, exactly he didn't tell me but he told me plenty of them had been interned.

(Testimony of Mitsukiyo Yoshimura.)

Q. For what, for violation of tax laws?

A. Violation of tax laws and all kinds of violations, he says.

Q. Because they were aliens they were being interned, is that it?

A. Well, every time Mr. Latte say, he always mentions me, that I'm an alien.

Q. Yes? Because you were an alien you were going to be interned, is that what he told you?

A. Well, he says, he told me that if you're an alien, he says, you'd better watch out, he says.

Q. You are not answering me, Mr. Yoshimura. I asked you if he told you you were going to be interned because you were an alien.

A. No, not exactly I'll be interned, but he told me a lot of people that has been interned.

Q. Yes, because they were aliens?

A. Well, exactly, he says, most of them are aliens.

Q. Yes?

A. And within that alien people some of them are—cheated the Government, the United States Government, and what not, and [108] they were interned. And he told me that I would be maybe one of them.

Q. So that you did know, that is, Mr. Latte explained to you the reasons why alien residents of Hawaii were being interned in large numbers? You did know, didn't you?

A. Well, more or less I understand.

Q. You did know, then?           A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. So in your complaint when it says “for unexplained reasons” is that right or wrong? You said in your complaint, “The Japanese alien residents of Hawaii were being interned and imprisoned in large numbers for unexplained reasons.” You knew why they were being interned, didn’t you? Did you or didn’t you?

A. You see, I read the Japanese papers sometimes ago saying that people being interned.

Q. What Japanese paper?

A. Hawaii Times.

Q. When?

A. Well, I don’t remember exactly the date.

Q. What year?

A. About forty—nineteen—about 1944, I imagine.

Q. Before Mr. Irey came there or after?

A. I think it was before.

Q. How long before? [109]

A. I don’t remember how long before.

Q. All right. What did it say? What did this article say about it?

A. About these persons that running a business and found that they had two set of books and some other kind of mistakes, I think it was.

Q. Yes? What else?

A. That’s about all that I remember.

Q. So you knew before Mr. Irey came that people were being sent to jail, didn’t you? You read this all before Mr. Irey came, didn’t you? Will you answer the question, please, Mr. Yoshimura?

(Testimony of Mitsukiyo Yoshimura.)

A. Yes, I think I read that before Mr. Irey came.

Q. And you knew that people had gone to jail for that, didn't you, before Mr. Irey came, didn't you?

A. Yes, I read the paper.

Q. So when Mr. Irey told you that people were going to jail, you knew what he meant, is that correct? You understood what he meant?

Mr. Kashiwa: You mean Latte.

Mr. Towse: Very well, Mr. Latte. I'll give them all a chance.

A. I beg your pardon, sir?

Q. Did you understand? Let's take Mr. Latte first. When Mr. Latte told you that you would go to jail, you already [110] knew because you had read in the papers before they came out there that people or some person maybe had been sent to jail?

A. Well, Mr. Latte was in the store looking over the books and says that I had a little mis-entry there, and he keeps on telling that to me and doing things like that, why he told me that I might be interned or I might be sent to jail, and he told me that I might get a big fine for it. That's what he told me.

Q. Did that make you afraid?

A. Yes, very much, sir.

Q. Afraid of what?

A. I hate to leave my children behind. I don't know what's going to happen to them, have no income whatsoever.



Q. And you were just afraid to leave your family, is that it?      A. Well, yes, sir.

Q. Had you done anything wrong?

A. What do you mean, sir?

A. Just that. Had you done anything wrong that you were afraid of, or were you just afraid of leaving your family?

A. Well, I'm not saying that I'm not scared. I'm scared of going into jail or whatever it is and leave the family behind. But I don't remember that I've done anything wrong.

Q. So you knew at that time you hadn't done anything wrong, is that what you are trying to say, Yoshimura? [111]

A. Yes, which I know of.

Q. Which you know of?      A. Yes.

Q. Now, did you know then that interned alien residents were not being tried before this Federal Court here or any court but were being put in jail and detained for many years under the authority of the military governor? Did you know that? You didn't know that, did you?

A. Excuse me—

Mr. Kashiwa: May I have that?

(The reporter read the last question.)

Q. Did you know, Mr. Yoshimura, that alien residents were not being tried before this Court here, that if you did something wrong you couldn't go to court, you'd just go to jail without going to court? Did you know that?

A. I don't know, sir.

Q. You didn't know that?      A. No, sir.

(Testimony of Mitsukiyo Yoshimura.)

Q. You thought you could come to court, didn't you?

A. I don't understand very well on this.

Q. Well, what I'm trying to get at, Mr. Yoshimura, is that in this complaint it says here that alien residents were being put in internment without being taken before any court. Do you understand what I mean? This is a court. You know what internment is? And that alien residents of Hawaii were being [112] interned and they weren't given a chance or taken before any court. Did you know that?

A. That I didn't know, sir.

Q. You didn't know? A. No, sir.

Q. But you put it in the complaint here, is that right? Now, where did you hear that the military government was placing Japanese aliens in internment? Where did you hear that?

A. Mr. Latte told me.

Q. That's the first time you knew that?

A. Well, Mr. Ireys was also telling me all that when he came to the door.

Q. In April, 1944, is that the month you said they came out there?

A. I think it was April some time, I think, in 1944.

Q. And that's the first time you knew that Japanese aliens were being put in internment by the military government? Is that the first time you knew that?

A. No, I think I read some Japanese papers before that, I think.

(Testimony of Mitsukiyo Yoshimura.)

Q. When? How long before that?

A. Well, I think about 1930—1940—1943.

Q. And what did these Japanese papers say?

A. See, I don't understand very well, but the people that come over to the store always saying those things, and it come [113] into my ears.

Q. Yes?

A. That's how I remember it.

Q. Now, did you know why they were being interned?

A. I don't know. I did not know.

Q. You don't know why?           A. No.

Q. Do you know today?

A. Well, I know a little of it now.

Q. And in April, 1944, you didn't know?

A. Well——

Q. Is that correct?

A. Well, it's just a rumor that people was talking about which I heard. It came in my mind.

Q. And is that what made you fear the powers of internment? Is that what made you afraid of internment?           A. Well, I was afraid, too.

Q. First you were afraid of going to jail?

A. Yes.

Q. The second was internment?           A. Yes.

Q. Both?           A. Yes.

Q. And Mr. Irey and Mr. Latte, they both made you afraid of that, is that right? [114]

A. Well, Mr. Irey himself hasn't mentioned much about it but Mr. Latte was always.

Q. Oh, Mr. Latte?           A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. Now, if they hadn't talked about this interment, Mr. Yoshimura, would you have signed those papers the first time with Mr. Irej and Mr. Latte? If they hadn't talked about internment, if they hadn't threatened you with internment, would you have signed the papers? A. Probably I did.

Q. You would have? A. Probably.

Q. If they hadn't threatened you with internment? A. Probably yes—probably not.

Q. What do you mean? You don't know?

A. I don't know.

Q. I am talking about the first statement you made, the short statement.

Mr. Kashiwa: Now, that type of question is speculative. It's incompetent, irrelevant and immaterial, your Honor.

Mr. Towse: Your Honor, it's merely in support of the allegation of the complaint which alleges that the plaintiff would not have signed the said statement of fraud had there been no such threat of internment, as a direct result of threats of internment. Your Honor, this complaint alleges that is the [115] basic reason of it, the only reason why this plaintiff signed some statement pertaining to fraud. I believe I am entitled to have it clarified.

The Court: The question is in order but I am not too sure if the witness understands what you are talking about.

Mr. Kashiwa: Put it in simple language, Ed.

Mr. Towse: May I have that?

(The reporter read the question referred to.)

(Testimony of Mitsukiyo Yoshimura.)

Q. Mr. Yoshimura, you remember the first time Mr. Irey went with Mr. Latte and another man?

A. Yes.

Q. And did you sign a short statement, did you sign a short paper there? A. No, sir.

Q. This little eight by ten line——

A. No, sir.

Q. You don't remember signing it?

A. I don't remember.

Q. You don't remember?

The Court: The only statement this witness testified to on direct examination as having signed was a statement made in Mr. Irey's office at the Young Hotel building. Is that what you are talking about?

Mr. Towse: No, your Honor.

Q. Mr. Yoshimura,—— [116] A. Yes.

Q. ——I'll give you a chance to think. You only signed one statement about your income tax trouble now, is that correct?

A. Well, one time I signed a paper at the Young Hotel building in Honolulu.

Q. Was that the first and only paper you signed about your tax trouble? A. Yes.

Q. What were you going to say?

A. Then the two people came afterward.

Q. Yes? A. After.

Q. Well, that was some printed stuff?

A. Yes.

Q. But in your own handwriting, just one time, is that correct? A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. Now, when the three men came the first time in April, Yoshimura, you said that they asked you to show them the books. Did they demand the books from you?           A. Yes.

Q. They demanded?           A. Yes.

Q. What did they say?

A. They say they want all the books I have.

Q. Well, how did they say it, Yoshimura? Did they holler at you or hit you with something and ask you to give them the books or were they polite or what?

A. Well, they said, I want to see all your books.

Q. Yes?

A. And any papers that belongs to the store.

Q. Yes? Now, who asked you that, Yoshimura?

A. Mr. Irej.

Q. Yes? And how did he say it? Did he say it in what you might call a sassy way or what?

A. Well, not exactly sassy way, but he says—he came into the store and says, my name is Mr. Irej, and he showed me the card and put it back in his pocket. And then he says that we are from the Internal Revenue office, we came to check your books, he says. So this—I want all your books and anything that consists for the store. So I told them that everything is all open. So I showed them where the books are, and he went over. And the store and my old—my whole living room and all was all open, and I showed them where to go, and the three of them went over the house and the store and everything that I have. And they want me to open the

(Testimony of Mitsukiyo Yoshimura.)

cash register, and I open everything wide for them. And they looked around and they collect the books that I had and my daily sheets and everything.

Q. That's from the back room?

A. No, it's right in the store, it's right in the store. [118]

Q. Excuse me. That answers the question. Now, you did say, Yoshimura, that Mr. Irey said he was from the Federal Internal Revenue office just now?

A. Yes.

Q. And before you said he showed you a card and said that he was a Federal investigator. Now, which is right? You said all that Mr. Irey said was, I am a Federal investigator, and he put the card back. Now you just said he was from the Internal Revenue Tax Office.

A. Yes.

Q. Now, what did he say?

A. He say—Mr. Irey told me that he's from Federal investigator.

Q. From what office?

A. Internal Revenue.

Q. Yes. He told you that, didn't he?

A. Yes.

Q. He was polite about it? A. Yes.

Q. He didn't threaten you? A. No, sir.

Q. Did he threaten you if you didn't produce the books you'd be interned?

A. Well, that I don't know.

Q. What do you mean you don't know? If he threatened [119] you, you'd know it.

A. But I was worried.

(Testimony of Mitsukiyo Yoshimura.)

Q. Did he ask you politely for the books?

A. He asked politely. But after he started to look, then Mr. Latte was over the store, after these two persons left the store. He went to my living place?

Q. Yes. You mean the camp?

A. Yes. Then Mr. Latte was in the store checking up my books and what not. And I'm tending to my customers. If I'm not busy, well he called me in and tell me that people had been interned and what not.

Q. And all this time you were tending to customers?      A. Yes.

Q. Selling cold drinks?      A. Yes.

Q. Gasoline?      A. Yes.

Q. Answering the telephone?      A. Yes.

Q. You weren't paying much attention to Mr. Latte, then?

A. No, Mr. Latte allow me to do that. He told me I can take care of my customers.

Q. Now, you have shown the books, you have produced the books from the safe, I believe, in the back room, didn't you? Weren't there some books in the safe in the back room? [120]

A. Yes, from 1941 and '42, way back.

Q. And weren't there some more records in the corner of the front room that Mr.—

A. Well, see, my books are all scattered here and there.

Q. The books are all scattered?      A. Yes.



(Testimony of Mitsukiyo Yoshimura.)

Q. What do you mean by the books? These little things here were, Exhibit A?

The Clerk: B.

Q. Pardon me. Exhibit B. These things were scattered all around?

A. These were scattered all over, too.

Q. For 1941 they were scattered around?

A. For '42.

Q. And '42?

A. And I had some in my desk drawers.

Q. For '43, too?           A. Yes.

Q. You have used them already for the tax?

A. That's right.

Q. They were scattered all over the store?

A. Yes.

Q. Did you know they were scattered all over the store?

A. Well, some of them was in the drawer and some of them was in the shelf. [121]

Q. You mean for the different years? I thought you gave these things to Mr. Farm to make up the taxes.

A. Well, after he got through, some of them he brought it back to me and I left it just the way he brought it.

Q. He brings back some?           A. Yes.

Q. He doesn't bring back all?

A. That I don't think, because otherwise I should have them.

Q. So your records weren't complete, then, that you showed to these investigators, is that correct?

(Testimony of Mitsukiyo Yoshimura.)

A. Well, yes, because I had some of these in my desk drawers, as I said at first. Captain Walker had my desk and he took everything out and when it came back it didn't have anything in it.

Q. So you don't know, Mr. Yoshimura, if your records that you showed to the investigators were complete? Do you know if they were complete?

A. Well, I don't think so.

Q. You don't think they were complete?

A. But all the tax has been figured by Mr. Farm. They must have all that record.

Q. Now, you said they went all over the house and searched for books and everything. You said that? A. Yes. [122]

Q. What do you mean by everything? What else were they looking for? Did they ask you for anything else besides books and records, Yoshimura?

A. They asked me how much cash money I have.

Q. Yes? You showed them what cash money you had? A. Yes.

Q. Is that what you mean by everything? You said they went, searched, went all over the house and searched for books and everything. By the house you mean the service station?

A. Service station.

Q. What else were they looking for? The books and the cash money. Anything else?

A. I don't know.

Q. Did they turn the place all upside down, knock things down and search all over the place?

(Testimony of Mitsukiyo Yoshimura.)

A. Well, anyhow, when Mr. Irey went over to my living place, my wife was home.

Q. Yes?

A. And they let the two people in and told them to look over everything they want to, and they had the doors wide open.

Q. Well, that's up at your house at the camp?

A. Yes.

Q. Well, we'll get to that in a minute. But down here at the service station——

A. Yes. [123]

Q. ——did they turn the place upside down or do anything to make you afraid?

A. Well, they did, sir.

Q. What?

A. Well, all the papers and stuff like that I had and everything, why they were going through the shelves and what not.

Q. Yes?

A. Well, the customers are in there and of course at that time the place was so dusty and filthy, but all the people that was in the store looking for the books and what not, they had gone in the front and gone in the back and come out again and done it for so many times.

Q. Yes?      A. I was scared, sir.

Q. You were scared?      A. Yes, sir.

Q. Well, Yoshimura, you still haven't told us and told the Court, did they turn your store upside down, did they mess up everything looking for these records, or did they just pick out what was there?

(Testimony of Mitsukiyo Yoshimura.)

A. Well, certain things, well they cannot find, they have been trying to look for, I guess.

Q. Yes?

A. Going on shelf after shelf and going around the back [124] and in the back room, they come out again.

Q. Did they do that in a nice manner, nice way? I mean, did they do it in a nice way or did they knock things down or holler at you?

A. Well, I didn't have much things to knock them down anyhow.

Q. All three of these men did this?

A. Three of them, yes.

Q. All at the same time?           A. Yes.

Q. For how long? How long were they there?

A. Well, I think they have been there over an hour and one-half, I think.

Q. About an hour and one-half?           A. Yes.

Q. Now, you knew that they came about the taxes and that they have the right to do that, don't you?           A. Yes.

Q. You know they have the right to come and ask for books, Yoshimura? You have been in business how many years?

A. About thirteen years.

Q. By yourself?           A. Yes.

Q. And you keep tax records in your business? Sure you do. You know that tax people have the right to come and examine your books if they want to, that the Federal people have that [125] right?

A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. And you didn't call your attorney then?

A. Beg your pardon?

Q. Why didn't you call your attorney when they came?

A. Why didn't I call my attorney?

Q. Yes, on the day they came.           A. Yes.

Q. Demanded your books?           A. Yes.

Q. And threatened you? Why didn't you call your attorney and tell him?

A. Well, I thought to myself I haven't done anything wrong so I didn't bother to hire a lawyer.

Q. And because you didn't do anything wrong you weren't afraid, is that right?

A. That's right.

Q. You weren't afraid, were you?

A. But after Mr. Latte said that I haven't entered \$150 in the books, then he started to telling me about people that had been interned and going to jail and what not, see.

Q. You still haven't answered the question, Mr. Yoshimura. After all that, I want to know why you didn't call your attorney and tell him about that? Do you want to answer the question, Mr. Yoshimura? You had seen Mr. Kashiwa already about didn't call your attorney and tell him about that? filing [126] Foreign Funds declaration, hadn't you?

A. Yes.

Q. Why didn't you call him now? They were threatening to put you in jail without being in court. The military governor was putting you in jail. If you were afraid, I want to know why there was a reason why you didn't call Mr. Kashiwa?

(Testimony of Mitsukiyo Yoshimura.)

A. In a way if I'd hire a lawyer, I don't know how much the lawyer would cost me, and I didn't have not much cash with me, and I was afraid that I cannot pay. So I thought if I could do it with myself I thought I can save the money.

Q. In other words, you weren't afraid enough of this whole thing, Mr. Yoshimura, to think that it was enough to call an attorney, isn't that right?

A. No, sir.

Q. That's right? Now, did you ask for an interpreter that day?

Mr. Kashiwa: Now, that type of question is purely argumentative. Ask him questions. No use arguing with him.

The Court: The question has been asked and answered. Proceed.

Q. Did you ask either of these men for an interpreter, Yoshimura?

A. I told them that I don't understand these hard terms. I told them that if they can explain to me the easy way in which I can understand—

Q. But you didn't ask for an interpreter, Mr. Yoshimura? You still haven't answered my question.

Mr. Kashiwa: That question is vague. When? Where?

Mr. Towse: On this first trip. We are still on this first trip, Mr. Irey and the other gentlemen.

Mr. Kashiwa: At the store there?

Mr. Towse: Yes, the service station. Still in April, 1944.

(Testimony of Mitsukiyo Yoshimura.)

The Court: I think we had better leave it there for the night. Otherwise we'll be here much later.

Mr. Kashiwa: We can run it for two weeks on this cross-examination.

The Court: Possibly. I hope not, however. Tomorrow afternoon the trial continues, at two o'clock.

Mr. Towse: If we start at one, we might be over.

The Court: It's agreeable to me.

Mr. Kashiwa: I get through about 12 o'clock, and 1:30 would be agreeable.

The Court: 1:30, then. All right. That will give you time enough to orient yourselves.

Mr. Kashiwa: Yes, your Honor.

The Court: All right.

(The Court adjourned at 4:05 o'clock, p. m.)

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Honolulu, T. H., December 18, 1946

The Clerk: Civil No. 733, Mitsukiyo Yoshimura versus Fred H. Kanne, for further trial.

Mr. Towse: Ready for the defendant, your Honor.

The Court: Is the plaintiff ready? Mr. Kashiwa, are you ready?

Mr. Kashiwa: Ready.

The Court: Very well. I believe that the plaintiff was under cross examination when we adjourned. And you, Mr. Yoshimura, are mindful of the fact

that you are still under oath? You may continue with your cross examination.

MITSUKIYO YOSHIMURA,

a witness in his own behalf, having previously been sworn, resumed and testified further as follows:

Cross Examination

(Continued)

By Mr. Towse:

Q. Mr. Yoshimura, Mr. C. B. Farm made out taxes for you? A. Yes, sir.

Q. Who gave him the figures?

A. I did. I gave him the figures.

Q. Anyone else? Where did you get the figures from?

A. From the daily sheet which I transferred to the book, and I give him everything. [129]

Q. You gave him the figures that you made?

A. That's right.

Q. Did he look at your books? A. Yes.

Q. And he looked over your books and your figures? A. Yes.

Q. When did he do that, before he made out the return?

A. Before he make out the returns and all the taxes at all times when he does file in.

Q. Yes?

A. I let him have all what I have.

Q. And then he fills out the tax returns?

A. Yes.



(Testimony of Mitsukiyo Yoshimura.)

Q. Do you sign them?           A. Yes.

Q. And he gives you copies?

A. Well, sometimes I did receive and sometimes I did not.

Q. Yes. So you don't know what Mr. Farm put in for your taxes in the return if you didn't get a copy, is that correct?

A. Well, exactly I do not know.

Q. Now, did Mr. Farm do that with all your taxes?           A. All my taxes.

Q. Federal income tax?

A. Federal and Territory. [130]

Q. Income?           A. Yes.

Q. Personal property tax?

A. Yes, everything. Every taxes I depend on him.

Q. Gross income?           A. Yes, sir.

Q. And did he attend to any of your other business? Did he get the automobile tax for you?

A. Once in a while I used to ask him to go and get it for me.

Q. Social security?           A. Yes.

Q. Business license?           A. Yes, sir.

Q. Tobacco tax, liquor tax?

A. Yes, sir.

Q. Mr. Farm did all that?           A. Yes, sir.

Q. And from the figures that you gave to him?

A. That's right.

Q. Now, when these men were there and you asked them, or rather they asked you where you lived and you told them that you lived at Aiea Camp?           A. Yes, sir.

(Testimony of Mitsukiyo Yoshimura.)

Q. And you say after that then they went up to the house? [131]           A. Yes, sir.

Q. In the house?           A. Yes.

Q. Did they ask you if they could go to your house? Did they ask you if they could go to your house?           A. Yes.

Q. Did they say what they wanted to go to your house for?           A. Yes, yes.

Q. And what did they say?

A. They said they want to look over the house where I stay.

Q. Yes?

A. And if I have anything there, if it's all right for them to get it?

Q. Yes?

A. So I says it's O.K. with me.

Q. You told them it was O.K.?

A. Yes, sir.

Q. And in fact you telephone to your wife before they went, didn't you?           A. I did not.

Q. You didn't telephone to your wife?

A. I did not telephone. Mr. Latte was over there with me.

Q. Yes? [132]

A. And he told me not to telephone out.

Q. Did anybody telephone to your wife?

A. Nobody, nobody.

Q. And they were going up to the house, you say, to look for more books?           A. Yes.

Q. And some bonds, I believe, weren't there?

(Testimony of Mitsukiyo Yoshimura.)

A. Yes.

Q. And did they use an interpreter then? Did you have an interpreter there then?

A. In my store?

Q. No, at the time they asked you and you gave them permission to go to your house.

A. No.

Q. There was no interpreter and you gave them that permission, is that right? A. Yes.

Q. Now, this Captain Walker you speak of, Yoshimura—— A. Yes, sir.

Q. ——he was some officer stationed around there with a group of soldiers?

A. Yes. He was taking charge of this balloon barrages.

Q. Yes. And you knew him?

A. I know him in sight.

Q. Yes. And they came and borrowed your desk? [133] A. Yes.

Q. Did they give you a receipt for it?

A. No, they just sent the soldiers up and picked it up.

Q. Did they ask you for it before they took it?

A. Well, they ask me if Captain Walker can use my desk. I told them, yes.

Q. When was that?

A. I think that was the year 1942, I think.

Q. How long after December 7th, Yoshimura?

A. That was around about May, I think.

Q. About six, seven months after December 7th?

A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. And were you afraid when those soldiers came to take the desk?

A. Yes, I was kind of afraid.

Q. What were you afraid of?

A. Well, as I was an alien and I don't know what's going to happen to me, and they told me to evacuate the place and how I can do my business during certain hours, and I can't leave there, and I don't know what I was going to do because I didn't have any houses to go, and what became of my business, I don't know, which I was depending all on that business to——

Q. You were more worried than afraid, weren't you?

A. Well, I was worried and I was scared.

Q. And when these soldiers came, did they turn your [134] store upside down or take anything else but the desk?      A. No, sir; no, sir.

Q. They didn't threaten you?      A. No.

Q. Captain Walker was with them then?

A. No, sir.

Q. And eventually you got the desk back?

A. Yes.

Q. Now, when you say Mr. Irey left that day this little sheet of paper—I believe it's Exhibit B—he talked about coming to the Young Hotel building, did he?      A. Yes, sir.

Q. And what did you say?

A. Well, there was—he told me to come over Monday morning.

Q. Yes?

(Testimony of Mitsukiyo Yoshimura.)

A. But then, while I was running the store, I was taking care of the children's milk from the Dairymen's, which come in every other day, and I told Mr. Irey about it and he says that's O.K. and he told me to come over Tuesday.

Q. He told you if you couldn't come on Monday to come on Tuesday? A. Yes.

Q. And he invited you to come to the Young Hotel, the room in the Young Hotel office? Did he say what for? [135]

A. No, he just told me just come and find me at this Young Hotel building, and he gave me the address on a slip of paper.

Q. Well, did you know what you were going to go down for or what you were asked to go down for, Mr. Yoshimura? A. No, sir.

Q. You had no idea?

A. No idea whatsoever.

Q. No idea whatsoever? In other words, when you got to the hotel and you found this room, you didn't know what to expect?

A. No, I did not.

Q. You didn't think it was anything about taxes?

A. Well, in a manner more or less I thought of this tax business because they already had gotten my books.

Q. So you did know it was about taxes, is that right? A. Yes.

Q. Did you call your attorney then to go with you? A. No, sir.

(Testimony of Mitsukiyo Yoshimura.)

Q. Did you ask for an interpreter or bring an interpreter with you?      A. No, sir.

Q. And did Mr. Irey tell you that if you didn't go down there on that Tuesday morning that you'd be interned?

A. No, Mr. Irey did not tell me that. [136]

Q. He didn't threaten you?      A. No, sir.

Q. He didn't scare you? He was polite and he invited you down and you accepted? Isn't that the way it was?      A. Yes, sir.

Q. Now, when you got there on a Tuesday morning——      A. Yes.

Q. ——did you bring an interpreter with you?

A. No, sir.

Q. Did you bring an attorney with you?

A. No, sir.

Q. Now, you went in this room—560 I believe you said—and you waited a little while?

A. Yes.

Q. Who else was in the room that you were waiting in, Mr. Yoshimura?

A. I saw a lady was in there.

Q. One lady, or more than one?

A. Well, in the next room they had more, of course, but the place where I went in I saw a lady.

Q. And that's the room that you related to Mr. Irey——      A. Yes.

Q. ——that you later talked to Mr. Irey in?

A. Yes.

Q. And how long did you wait there, Mr. Yoshimura, before [137] Mr. Irey came in?

(Testimony of Mitsukiyo Yoshimura.)

A. About five minutes.

Q. And then Mr. Irey came in? A. Yes.

Q. What did he say to you and what did you say to him?

A. Well, he told me that—about this tax business—told me it wasn't filed in right.

The Court: Excuse me. Told you or asked you?

The Witness: Well, Mr. Irey told me, yes.

The Court: Well, sometimes you people who do not talk English too well use the word "told" in the sense of "asked", and I want to know if you really meant "told."

The Witness: I understand. Told me that the tax wasn't filed in right, which I thought the tax filing was everything O.K. on Mr. Farm. So I told him, I says my taxes was to be paid up for filing.

Q. Now, Yoshimura, when you were waiting there, then Mr. Irey came into the room, that's the question I asked you? A. Yes, sir.

Q. He did? A. Yes.

Q. All right. Did you speak to him first or did he speak to you?

A. Mr. Irey speak to me first.

Q. Yes, and what did he say? [138]

A. He told me "Good morning."

Q. And what did you say?

A. I say "Good morning, Mr. Irey."

Q. Now, did he then ask you to take a chair?

A. Yes.

Q. He did? A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. And this other person was still in the room, this woman?           A. Yes.

Q. So there were three in the room?

A. I think there was three.

Q. Well, now, you were there, Yoshimura?

A. Yes.

Q. Were there three in the room there during this time that Mr. Irey talked to you?

A. Well, I think it was three because out there I don't know what's going myself what happened, and I was nervous and I couldn't see exactly how many persons but I thought three persons were with me.

Q. There might have been more?

A. There might have been more. They had more noise. I don't think there was any door to the next room, and what not.

Q. Did you talk to anybody else except Mr. Irey that [139] morning?           A. No, sir.

Q. Mr. Irey is the only one that you spoke to about taxes?           A. Yes.

Q. In that room?           A. Yes.

Q. Now, you say that Mr. Irey told you you had to make a statement. Now, when did he tell you that?           A. Right that morning.

Q. After you had sat down?           A. Yes.

Q. Now, then you testified that he told you to write out a statement?

A. He told me to write out a statement.

Q. Now, did you?

A. Well, I said to Mr. Irey that I haven't got



(Testimony of Mitsukiyo Yoshimura.)

much of an education, I don't know what kind of a statement to make out.

Q. Yes?

A. And I told him about it.

Q. Yes?

A. Then he pick up a pencil and he started write out, which I could not understand very well.

Q. Yes? [140]

A. And he went in about half way and he brought out a word "fraud", asking me if I know the word of "fraud."

Q. Yes?

A. I didn't know what it meant. I told him that I do not know what the word "fraud" meant. And he tried to explain to me and I still couldn't understand clearly, so he asked the lady was in that room how to explain the word "fraud" to me. But this woman herself said some word but which I could not understand. Then Mr. Irey said that, oh, maybe cheating or crooking or some sort of word like that.

Q. You understood those words?

A. Cheating, yes, yes.

Q. So you understood, then, what he was talking about when he was talking about fraud?

A. Well, exactly I could not understand that sentence that he wrote.

Q. Well, where was he getting this thing that he was writing, Yoshimura? Were you telling him what to write?

A. No, sir.

Q. You never told him? A. No.

(Testimony of Mitsukiyo Yoshimura.)

Q. Anything to write?

A. Well, he just keep on writing it.

Q. Yes?

A. And asked me how I filed my taxes. I told him that [141] I just hand over my books and the papers to Mr. Farm. Then he kept on writing a sentence.

Q. Now, Yoshimura, I don't want you to say what was written down. I merely—that is not a part of these proceedings. I don't want to know what was written. But what we want to get clear here is, you say that Mr. Irey was writing on a sheet of paper. A. Yes.

Q. Now, it's not quite clear to me whether you were telling him what to write down on the paper or if he just picked up a piece of paper and started to write. Now, you try and recall what happened.

How did he know what to write on this piece of paper?

A. Well, I didn't know what to write myself.

Q. You are not answering my question, Yoshimura. Did you tell Mr. Irey as he wrote on this sheet of paper what to write down? Did Mr. Irey write one sentence and then did he stop and would you tell him what to write down then?

A. Mr. Irey just kept on writing.

Q. And did you tell him what to write, Yoshimura? A. I did not.

Q. You didn't tell him a single word, not one word what to write on that piece of paper?

A. Well, between time, while he is writing——

(Testimony of Mitsukiyo Yoshimura.)

Q. Yes? [142]

A. —asked me if that tax was filed in right.

Q. Did he ask you anything else, Yoshimura?

A. Well, that's about all that I can remember.

Q. He just asked you one time if the tax was filed incorrectly, is that right? That's the only time Mr. Irey asked you anything?

A. No, he must have said something but I couldn't recall myself.

Q. All right, now. That's all right. I don't want you to recall, Yoshimura, but what I do want to know is if Mr. Irey just one time asked you what to write on the paper.

Mr. Kashiwa: That's a very unintelligible question, whether Mr. Irey just one time asked you what to write. I wouldn't be able to answer that.

Mr. Towse: Well, I was cautioned the other day not to make too long or complicated sentences and I was trying to use a little pidgin English to shorten it.

The Court: I think with reference to the prior questions that that last question is clear. The witness may answer. Do you understand the question? Do you understand the last question?

The Witness: Not exactly. I did not understand.

The Court: All right. Reframe the question.

Q. All this time Mr. Irey was writing, Yoshimura? A. Yes. [143]

Q. You remember that? A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. Now, you say that just one time he asked you what to write on the paper?

A. No, he must have some more words to me but which I don't remember.

Q. You don't remember?           A. Yes.

Q. But he asked you what to write on the paper more than once?           A. What to write?

Q. Yes.

A. Well, he just told me I have make a statement.

Q. Yes. Did you make a statement?

A. I did not, sir. I do not know how to make statement.

Q. Did you tell Mr. Irey what to write?

A. No, sir.

Q. You didn't?           A. No, sir.

Q. In other words, Mr. Irey wrote the whole statement, is that right?

A. He wrote it down.

Q. He wrote the whole statement?

A. Yes.

Q. You didn't tell him what to write? [144]

A. I did not.

Q. Are you sure you didn't write that statement, Yoshimura?           A. I did not, sir.

Q. You didn't write it in your own handwriting?

A. No, sir.

Q. You had written one statement before that, hadn't you? Wasn't this the second statement? Didn't you write one out at the service station, a short one, in your own handwriting that you signed

(Testimony of Mitsukiyo Yoshimura.)

on the Coca Cola stand, the first time that the three men came out there, a very short statement in your own handwriting?

A. That I don't remember, sir.

Q. Do you deny that you wrote a first statement, Mr. Yoshimura?

A. Which I remember that I wrote my name on it, on top of that Coca Cola cooler?

Q. Yes.

A. Was the time two persons came in.

Q. Yes? You did write the statement?

A. I did not write statement. They brought in a copy. They wanted me to sign the paper.

Q. That was when the three men were there?

A. No, two men.

Q. Two men? Now, I'm talking about the time Mr. Ireys [145] and this other agent, Latte, when they were there, the very first time. It was on a Saturday about 12 o'clock. Do you remember, Mr. Yoshimura?      A. No, sir.

Q. You don't? Well, do you say that you didn't sign it or didn't write out a short statement the first time when Mr. Ireys and Mr. Latte and the other man were there?

A. I don't remember.

Q. You don't remember? Now, this time when the two men came, the one I think you described as the Chinese man——      A. Yes.

Q. ——did they tell you who they were?

A. They told me from Federal Government.

(Testimony of Mitsukiyo Yoshimura.)

Q. Yes. Now, that's when they asked you to sign another paper? A. Yes.

Q. Did they explain what that paper was?

A. Well, they told me it was about my tax cases. They wanted me to sign the paper.

Q. Yes?

A. Well, at that time I already seen Mr. Kashiwa, so I told the two people what it's for, I don't know, I cannot very well understand, so I told them to give me time to take the papers over to my lawyer, because every time I go up to Mr. Kashiwa he says, well, without you understanding clearly [146] not to sign any more papers.

Q. Yes?

A. But when these two persons came they rushed me so much, they didn't give me any chance which is—I asked them to give me time to take the papers over to my lawyer and see if it's all right for me to sign. Then I says I'll sign the papers. Then they told me, says, can't wait that long.

Q. Didn't one of them invite you to go right then down to see your lawyer, Mr. Yoshimura?

A. I beg your pardon, sir?

Q. Didn't one of them ask you and say, let's go down now and see your lawyer?

A. No, they did not.

Q. Did not? A. Did not.

Q. Now, you also said the next morning you called your lawyer. You mean the next morning after that, then you called Mr. Kashiwa?

A. Yes.

(Testimony of Mitsukiyo Yoshimura.)

Q. Why did you wait that long if you were so afraid?

A. Well, I figured his office was already closed. No use getting in touch with him.

Q. What time was that that you remember signing this thing?

A. That was about after 3:30. [147]

Q. After three? After 3:30 in the afternoon?

A. Yes.

Q. You didn't call him that night?

A. No, I did not.

Q. Now, didn't you——

A. These two persons, they didn't give me any chance.

Q. Yes?

A. To look over the paper either.

Q. They didn't explain?

A. And they told me, you'd better sign this paper, otherwise their boss will get very mad, and they told me I might go in jail or be with a very much heavy fine, and didn't give me any chance to see my lawyer.

The Court: Excuse me. We will have to take a brief recess while the reporter attends to a matter in Judge Metzger's division, which should not be more than a few moments, I presume.

(A short recess was taken at 2:00 p. m.)

(Testimony of Mitsukiyo Yoshimura.)

After Recess

By Mr. Towse:

Q. Now, Mr. Yoshimura, when these two men were there, did you ask them anything about the interest that you had to pay? A. No, sir.

Q. You didn't? Did they tell you anything about the interest? [148] A. No, sir.

Q. Did you ask them whether you had to pay it all at one time? A. No.

Q. Did they tell you anything that you didn't have to pay it at one time? A. No, did not.

Q. They didn't? Now, you will have to answer. A. No, sir.

Q. I can't hear you when you shake your head. A. No, sir.

Q. Now, one more question. At the Young Hotel there when Mr. Irey got through writing out this statement for you,—

A. Yes, sir.

Q. —did you sign it? A. Yes, sir.

Q. Did he ask you to sign it? A. Yes, sir.

Q. What did he say?

A. He told me to look over the papers. I looked over the papers but I couldn't very well understand.

Q. Did you ask him the parts that you didn't understand, did you ask him to explain to you?

A. Well, I told Mr. Irey that which I can't understand very clearly. [149]

Q. Yes?



(Testimony of Mitsukiyo Yoshimura.)

A. And he told me, nothing to worry about, just put your name down.

Q. He said it's nothing to worry about?

A. Yes. So I put my name down.

Q. Then what happened?

A. Well, after that they told me I can go home. So I come back and I opened up the store again.

Q. Did you thank him?           A. Yes.

Q. You thanked him then?       A. Yes.

Q. Now, under this martial law, Yoshimura, did you ever go to court when the martial law was in effect in the Territory, any court?

A. No, sir. This is the first time I've been to court, Mr.—

Q. All right, now, you registered as an alien?

A. I beg your pardon?

Q. You registered as an alien, didn't you?

A. Yes.

Q. And you had your certificate all the time, you carried it with you?           A. Yes, yes.

Q. Were you arrested or picked up by the F.B.I. or any [150] Army men?       A. No, sir; no, sir.

Q. Never? You turned in firearms and weapons?       A. I have none.

Q. On December 7th?

A. I did not have any.

Q. You didn't have any?       A. Yes.

Q. I don't want to be misunderstood, Mr. Yoshimura. I am not saying you did or didn't. I just want to know. This case has got nothing to do with

(Testimony of Mitsukiyo Yoshimura.)

those rules. You knew about having to turn in radios that had short wave, I believe?

A. Well, I had one old radio.

Q. But you knew about those?

A. It's not the short wave. I understand we have to turn in all the radio?

Q. You understood that? You knew that you had to do that if it was short wave? That's all I want to know. I don't care if you did or not.

A. I didn't have any short wave.

Q. You understood about the curfew and black-out and all those things?      A. Yes.

Q. And you obeyed those?      A. Yes. [151]

Q. And you had no trouble?

A. No trouble.

Q. And you understood that everybody continued to pay taxes when martial law was on? The Government didn't say because martial law was in effect you don't have to pay taxes?      A. Yes.

Q. You understood, to continue to pay taxes?

A. Yes.

Q. Now, on this one visit when Mr. Irey came out on the bus and looked around the store, you remember testifying to that?      A. Yes.

Q. Mr. Irey. Will you look at this man? Is this the man that came out?

A. Yes, this man.

Q. That man came out on the bus?

A. Yes.

Q. And looked around?      A. Yes.

Q. And asked about the automobile?

(Testimony of Mitsukiyo Yoshimura.)

A. Yes.

Q. The books and the automobile?

A. Yes.

Q. This is the man?           A. Yes. [152]

Q. You don't own the service station any more,  
Yoshimura?           A. No, sir.

Mr. Towse: Will you stipulate that this is his  
signature

Mr. Kashiwa: If you want a copy——

Mr. Towse: No, I have the original.

Q. Mr. Yoshimura.—I'm showing the witness a  
one-page document, the name in blue ink at the  
bottom, Mitsukiyo Yoshimura—did you sign that?

A. Yes.

Q. You remember signing this? I believe it's  
dated October 14, 1946, about a month and one-half  
ago. You remember this? That's where you said  
you quit business at the end of August, 1946, and  
that you have in the bank \$444 in a savings account,  
and cash on hand of a thousand dollars.

A. Yes.

Q. And notes receivable, \$250?           A. Yes.

Q. You remember this?           A. Yes.

Q. You signed this?           A. Yes.

Q. That's your handwriting?           A. Yes, sir.

Q. And it's true, then, Mr. Yoshimura, that you  
quit the business at the end of August, 1946? [153]

A. Yes, sir.

Q. Did you sell it or what?

A. No, I just have to give it up.

(Testimony of Mitsukiyo Yoshimura.)

Q. What do you mean by "give it up?" Did you sell it?

A. The place doesn't belong to me anymore.

Q. That's the land, as I understand it. The land was leased from the plantation, I believe.

A. No, sir.

Q. Well, you didn't own the land?

A. The land and the store.

Q. The building? A. The building.

Q. Well, did you sell the building? Did you get anything when you quit business?

A. No, sir.

Q. Nothing?

The Court: Just a minute. Did you or did you not own the land?

The Witness: I did not.

The Court: Did you or did you not own the building?

The Witness: I did not own the building.

Q. That was on lease, I believe, from the plantation. A. Yes.

Q. You sold some of the equipment, three or four hundred dollars' worth? [154] A. Yes.

Q. So you got something from the business?

A. Yes.

Q. Where are you working now?

A. I'm staying home right now.

Q. Are you working? A. I am not.

Q. And you haven't worked since you sold the business in August?

A. Well, I have no capital to do anything right

(Testimony of Mitsukiyo Yoshimura.)

now. Where I am staying at Mr. Dowsett's farm I make arrangement to lease about two acres of land now and do a little farming there.

Q. And from August to this time you are supporting your family and the seven children that you mentioned before, is that correct?

A. Seven children? I have four children.

Q. Well, you are helping your brother, I believe you said.

A. That is, from time to time I do help, sir, because my brother's oldest son started to work and helping the family now. So whatever they haven't got enough, they ask me, then I used to help them. I've been doing that for all these years.

Q. And you are not working now?

A. No, sir.

Q. You have no money coming in? [155]

A. As is now, I have no income.

Q. Very well. Now, talking about this tax, Mr. Yoshimura, did you, or through your attorney, did you write to Washington about this tax, this assessment of nine thousand dollars? You understand what I mean? You know now that the amount we are talking about is nine thousand dollars?

A. Yes. Sometimes ago I had a letter from Mr. Kanne, I think, and I drove it up to Mr. Kashiwa.

Q. That's just from Mr. Kanne?

A. Before then I think it came from Washington, too.

Q. And that's when you talked about this form you signed when you asked to have it given back

(Testimony of Mitsukiyo Yoshimura.)

to you, isn't it? What I'm talking about is the tax, Mr. Yoshimura. Did you ever write to Washington or go to Mr. Kanne's office and ask him about this tax of nine thousand dollars? You can tell me that.

Mr. Kashiwa: Your Honor, I'll make that clear. I wrote the letter.

Mr. Towse: Well, I want to merely show in closing that there are four or five steps which I feel that I shouldn't negative so far as relief on this man is concerned, other than this suit.

Mr. Kashiwa: We are not resting yet.

Mr. Towse: Well, this is cross-examination. Yoshimura, do you understand what I mean? This letter that you talk about. I believe it's the one——

The Court: Did he sign it or did the attorney sign it?

Mr. Towse: I believe counsel.

The Court: He may not know what you are talking about.

Mr. Towse: Well, Mr. Kashiwa, maybe we can simplify this. Will you stipulate that the administrative steps have been taken through or to Washington as to the amount of this assessment or the payment thereof?

Mr. Kashiwa: I want to stipulate that I wrote that letter and this answer came back. (Handing a document to Mr. Towse.) If that's what you are driving at.

Mr. Towse: I had in mind the amount of the tax. Let me put it this way: Have you taken any administrative steps through the Commissioner or

(Testimony of Mitsukiyo Yoshimura.)

through the Treasury Department contesting the amount of this assessment of nine thousand?

Mr. Kashiwa: You are asking me?

Mr. Towse: Yes, on behalf of——

Mr. Kashiwa: I'll take the stand later.

Mr. Towse: Very well.

Q. Yoshimura, have you paid this nine thousand dollars in tax? You haven't paid this tax of nine thousand dollars? Have you paid? Did you go down to pay Mr. Kanne or did you give Mr. Kashiwa the money to pay?           A. No, sir.

Q. Did you give him anything to pay on this tax, any amount? [157]           A. No.

Q. Speak up. What is the answer?

A. No, sir.

Mr. Towse: Well, I tender the same thing. Mr. Kashiwa, you will take the stand for this purpose?

Mr. Kashiwa: Yes.

Mr. Towse: Very well. No further cross-examination.

The Court: Redirect?

### Redirect Examination

By Mr. Kashiwa:

Q. Mr. Yoshimura, when the two men came down, one was a Chinese boy, and you testified they made you sign two papers there?           A. Yes.

Q. Now, did he explain to you the provisions of Section 272 of the Internal Revenue Code, what that was?

A. No. He just show me the papers.

(Testimony of Mitsukiyo Yoshimura.)

Q. Did he tell you that after you signed this, if there is any further additional tax due they can assess again?

A. No, he did not say anything about those things.

Q. Did he read this thing to you?

A. No. He just showed me, want me to sign it. He didn't have any dollars and cents on that paper.

Q. Now, this term "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax," do you know what that [158] means?

A. No.

Q. Do you know what that means?

A. No, sir.

Q. Now, this store, this place of business you had at Waiau, was that only a service station? Let's say back in 1941?

A. A service station and living quarters.

Q. And what else?           A. That's all.

Q. Did you sell anything?           A. No, sir.

The Court: I presume he sold gasoline.

Mr. Kashiwa: Well, I mean grocery.

Q. You sold grocery?

A. In 1941 I still had a few canned goods.

Q. A little bit of groceries?           A. Yes.

Q. Was it more a service station than a grocery store?           A. Yes.

Q. Now, you mentioned that your place was put out of bounds. When was it put out of bounds?

The Court: That's the first I have heard of that.

A. Nineteen——



(Testimony of Mitsukiyo Yoshimura.)

Mr. Kashiwa: Well, he said that he evacuated rather. [159]

The Court: Oh.

A. I was evacuated over there April 28, 1942.

Q. And when were you permitted to come back?

A. After three and one-half years.

Q. After three and one-half years?

A. Yes.

Q. Now, were you permitted to come back there at certain hours?

A. Well, when they permitted we could go and live there.

Q. How about the business? Were you permitted to conduct your business? A. Yes.

Q. What hours were you permitted to stay at the store?

A. Seven in the morning and six in the evening.

Q. Now, about how many yards, would you say, your place of business was from the Pearl Harbor lagoon then, from the water there, how many yards?

A. Well, exactly I don't know how many yards.

Q. Well, how many miles?

A. You go straight across——

Q. From the water to your place of business there.

A. Well, if you go straight across maybe about, oh, less than a quarter of a mile.

Q. Less than a quarter of a mile?

A. Yes. [160]

(Testimony of Mitsukiyo Yoshimura.)

Q. In other words, you are very close to Pearl Harbor?      A. Yes.

Q. Lagoon?      A. Yes.

Q. Now, were you the only party who was told to vacate there?      A. No.

Q. How about the other people?

A. There were farmers, they were the same way, they had to evacuate.

Q. Now, this statement—that's a copy of it—that Mr. Towse referred you to, that you had in the Bank of Hawaii \$444.44, in savings account in the same bank \$40. This statement was made in whose office?      A. Mr. Kashiwa's office.

Q. That was made about two months ago, in October, 1946?      A. Yes, sir.

Mr. Kashiwa: I offer this in evidence.

Mr. Towse: Is it a copy?

Mr. Kashiwa: It's in your answer.

Mr. Towse: No objection.

The Court: It may be received as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's Exhibit D. [161]

(The document referred to was received in evidence as Plaintiff's Exhibit D.)

(Testimony of Mitsukiyo Yoshimura.)

PLAINTIFF'S EXHIBIT "D"

Affidavit of Net Worth

Territory of Hawaii,

City and County of Honolulu—ss.

Mitsukiyo Yoshimura, being first duly sworn, on oath deposes and says:

That the following statement is my net worth:

Bank of Hawaii, Waipahu Branch.....	\$ 444.44
Savings account, same bank.....	40.00
Cash on hand .....	1,028.00
Accounts receivable .....	385.00
Notes receivable .....	250.00

(payor just got out of Leahi Home)

Land and building at Aiea—

net worth .....	3,000.00
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(Purchased for \$6,000.00, of which \$3,000.00 borrowed from Bert Yoshimura, a brother, on April 27, 1946. I bought this for my home.

No liabilities, except the \$3,000.00 to Bert Yoshimura.

Note: Quit business at end of August, 1946 because Government is fixing road in front of service station and there isn't any more business. Rent of \$150.00 per month can't be met. The service station must be raised to meet the new road level or else there will be no business. If raised by landlord, he says rent will be \$200.00 per month.

that this statement is made to the United States

(Testimony of Mitsukiyo Yoshimura.)

Collector of Internal Revenue to show my net worth as of October 14, 1946; and further affiant sayeth not.

/s/ MITSUKIYO YOSHIMURA.

Subscribed and sworn to before me this 14th day of October, A. D. 1946.

[Seal] /s/ FLORENCE Y. OKUBO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1947.

I hereby certify that the foregoing is a true and correct copy of the original.

-----  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires August 9, 1947.

Admitted 12-18-46.

Mr. Kashiwa: No further questions.

Mr. Towse: No further questions.

The Court: You are excused.

(Witness excused.)

The Court: Call the next witness.

-----  
SHIRO KASHIWA,

a witness in behalf of the plaintiff, testified as follows:

Mr. Towse: I'll waive the opening with the Court's consent.

The Court: Very well.

(Testimony of Shiro Kashiwa.)

The Witness: My name is Shiro Kashiwa. I'm the attorney for the plaintiff in this cause. During the year 1945 certain tax investigators who then had offices at the Kahumanu School building, two of them, mentioned that they formerly worked in the California division, came to my office and showed me their credentials. Prior to that time I received a call from my client, from Mr. Yoshimura, that these people had called upon him, and I made arrangements to go up to the Kahumanu School to see them about taxes for Mr. Yoshimura. And Mr. Yoshimura in the meantime had come into my office and we talked the entire matter over. And in a couple of days I went up to the Kahumanu School and I explained the whole situation to [162] them.

Now, with relation to the year 1941, I explained that service stations in that locality there were running a very cut-rate type of business, and I told them that, as a matter of fact, I was counsel for the Service Station Association, and there were three service stations in Pearl City which were charged in the police court of the City and County, in the District Court of the City and County of Honolulu for cut-rate gasoline selling, and that, although Yoshimura was not arrested, he was in the same category, too. And at that time I told them that there was a case pending in the Supreme Court of Hawaii, which I subsequently won for the service station owners. And I told them that they were not making the ordinary profits in the service station business, although their gross gallonage was

(Testimony of Shiro Kashiwa.)

very high. And I further explained to them that Mr. Yoshimura after the war was in a predicament where he couldn't sell much gasoline, and the people around there were made to vacate the area. He had a small grocery line and that he didn't make much money.

At the time I was at the Kahumanu School with these investigators, after I made my statement, it was my understanding that they were going to send me a report after that. And I didn't do anything about it. And I waited and waited and waited for this report until one day Mr. Yoshimura came into my office and told me that he had signed certain papers. And so immediately [163] after that I went up to Mr. Peterson's office at the Young Hotel.

The Court: Who is he?

The Witness: Mr. Peterson is in charge of the agents in Honolulu, Internal Revenue agents. And Mr. Peterson said that that case was in the hands of Mr. Glutsch and that I should go and see Mr. Glutsch. So I went up to see Mr. Glutsch and Mr. Glutsch told me that that 870 waiver which Mr. Yoshimura had signed had already been mailed up to the mainland, and that it was too late as far as Mr. Glutsch was concerned. I went up to see Mr. Peterson, as I said before, because in prior cases I have been successful in obtaining back the 870 form signed, and I thought I would be able to get it back from Mr. Peterson. But in this case Mr. Glutsch had mailed it up to Washington. And at that time Mr. Glutsch told me that the best way to settle this case is to make a settlement, make an

(Testimony of Shiro Kashiwa.)

offer—why don't you make an offer? And he said that. He further stated that maybe I could get—the best way is to write to Washington anyway. So I did write to Washington. And this is my letter to Washington, a copy of it. Do you want to see it? (Handing a letter to Mr. Towse.)

Mr. Towse: I have no objection to the letter as such except the contents with reference to other individuals in there, which I consider as immaterial and irrelevant to the issues here. Perhaps you'd better let the Court examine it. [164]

(Letter is handed to the Court.)

The Court: Actually it hasn't been offered.

Mr. Kashiwa: I offer this in evidence. The original was sent to Washington.

Mr. Towse: I renew the objection on the grounds heretofore made.

The Court: Will you repeat those? I didn't understand you.

Mr. Towse: The portions of the letter that go to matters referring to Mr. Latte and his reported conduct that I don't think are material at all to the issues here. If the purpose of the letter is to show that the communication was had to the Treasury Department, with an accompanying request to reopen this thing, I will admit that. But the majority of the letter there I consider to be irrelevant.

The Court: Well, the only purpose for which I will admit it will be to show that you did write to Washington asking them to reopen the case of your client.

(Testimony of Shiro Kashiwa.)

Mr. Kashiwa: Yes.

The Court: The references in there to Mr. Latte are immaterial to the present issues as I now see them.

Mr. Kashiwa: Are you willing to stipulate, Mr. Towse, that I did write to the Commissioner of Internal Revenue on the 29th day of April, 1946, attention J. W. Carter, head of the division, requesting him to reopen the case? [165]

Mr. Towse: To reopen the entire case, I believe you said. Is that what the letter said? Yes, certainly I will admit to that.

The Court: In which case you do not wish to press your offer?

Mr. Kashiwa: Yes, your Honor. I'll withdraw my offer. And you are willing to stipulate that in answer to that letter on May 20, 1946, I received a communication to the effect that they refused my request?

Mr. Towse: And stated therein the reasons and making suggestion as to what steps you should take.

Mr. Kashiwa: Yes, suggestion. I'll put this whole letter in. Do you have any objection to this letter?

Mr. Towse: I have no objection to this letter.

Mr. Kashiwa: May I offer this letter, dated May 20, 1946, from the head of the division in Washington, D. C., Treasury Department, Commissioner of Internal Revenue?

The Court: Very well, it may become the plaintiff's exhibit next in order.



(Testimony of Shiro Kashiwa.)

The Clerk: Plaintiff's Exhibit E.

(The document referred to was received in evidence as Plaintiff's Exhibit E.)

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PLAINTIFF'S EXHIBIT "E"

Treasury Department  
Washington 25

May 20, 1946.

Office of

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue

And Refer to

IT:R:E:Aj

JHB-34267

Mr. Mitsukiyo Yoshimura

Pearl City

Oahu, T. H.

Dear Mr. Yoshimura:

Reference is made to a letter dated April 29, 1946, written in your behalf by Mr. Shiro Kashiwa relative to your income tax liability for the years 1941 to 1943, inclusive. Since the records of this office do not disclose that Mr. Kashiwa has a power of attorney authorizing him to represent you in this matter, the reply to the letter is addressed to you.

(Testimony of Shiro Kashiwa.)

It is requested in the letter that your case be reopened because you did not understand the agreement signed by you; that you do not owe and cannot pay the tax and that you did not agree to pay the sum of \$9,487.51.

The files in your case disclose that you signed an agreement waiving the restrictions on assessment and collection of the deficiency in tax of \$6,325.00 and penalty of \$3,162.51 making a total of \$9,487.51. You were advised by Bureau letter of March 26, 1946, that assessment would be made immediately in accordance with the agreement.

Your recourse is to pay the tax and penalty and to file a claim for refund. The bureau has no authority to give further consideration to your case until such time as a claim for refund is filed.

Any questions relative to the payment of the amount due should be taken up with the collector of internal revenue for your district.

Very truly yours,

E. I. McLARNEY,

Deputy Commissioner.

/s/ By J. W. CARTER,

Head of Division.

Admitted 12-18-46

(Testimony of Shiro Kashiwa.)

Mr. Kashiwa: I wanted to add this, that I have what is known as a Treasury card issued by the Treasury Department.

Mr. Towse: As a licensed practitioner? [166]

Mr. Kashiwa: Before the Treasury Department.

Mr. Towse: Oh, certainly, I am aware of that. I'll stipulate to that.

The Court: Do you have it there? I have never seen one.

Mr. Towse: It's a sort of a blue—green one, I think.

Mr. Kashiwa: It's very valuable for attorneys to have that. (Handing a small blue card to the Court.)

The Court: Thank you for showing it to me.

Mr. Towse: One minute, please, Mr. Kashiwa.

Q. (By Mr. Towse): How long after Mr. Yoshimura signed this document did you make a request of Glutsch and he told you it had already been mailed?

A. If I remember it was immediately after that.

Q. Well, immediately, may we say a matter of minutes, hours, days, a week? As near as you can recall?

A. At least within that day when Yoshimura came in.

Q. Well, then, how soon after Yoshimura signed it did he come in to you?

A. That I don't know. He testified that he came in the next day.

Q. Next day?                   A. He testified to that.

(Testimony of Shiro Kashiwa.)

Q. Within 48 hours? A. Yes. [167]

Q. Your sequence of events was within 48 hours? Now, Mr. Kashiwa, have you taken any formal administrative steps by way of appeal to the Treasury Department as to the payment of this tax, in payment?

A. The payment? You mean trying to settle it?

Q. Either the assessment or the payment other than this controversy regarding the alleged duress on the 870.

A. Well, Mr. Towse, the procedure would be for me to take an appeal to the U. S. Tax Court.

Q. That's what I'm——

A. But I couldn't do that very well because there's a waiver form signed in this case already.

Q. If that is one of six remedies available, as I understand it, let's assume that you are precluded from doing that by virtue of the outstanding 870.

A. Yes.

Q. Now, there is still an administrative appeal under the Internal Revenue statute.

A. What's that?

Q. Where you can appeal to the Commissioner directly regarding the amount of the assessment and the amount of the tax.

A. Well, by doing that we—you mean the procedure whereby we offer to pay a lesser sum?

Q. No. That's made to the Commissioner direct.

The Court: Once again, what is the nature of that remedy?

(Testimony of Shiro Kashiwa.)

Mr. Towse: Administrative appeal, as I understand it.

A. To whom?

Q. To the Commissioner.

A. To the Commissioner of Internal Revenue?

Q. Yes. Relative to the tax itself, the un-Constitutionality, the tax of assessment, not the method of assessment.

A. I wrote the letter to the Commissioner of Internal Revenue.

Q. That was the method of assessment. But as to the actual assessment made, the nine thousand dollars.

A. I always take it up with the Board of Tax Appeal.

Q. Well, as I understand, you have not taken any administrative appellate steps?

A. We have not, except for that letter I wrote.

Q. That's right? A. Yes.

Q. The tax, of course, hasn't been paid, the nine thousand dollars to Mr. Kanne?

A. It has not been paid.

Q. And, of course, since it has not been paid there is no action at law pending for the recovery of the tax against Mr. Kanne?

A. The reason why we didn't pay that tax was because we couldn't pay it, Mr. Towse. [169]

Q. However, you, in pursuance of that, did not make an offer to the Collector here to pay the thing in installments? That's another administrative step.

A. My understanding is that in order to sue for refunds you have to pay for the whole thing.

(Testimony of Shiro Kashiwa.)

Q. That is not correct, Mr. Kashiwa. The regulations provide that the Collector of the District can in equitable cases permit the payment in installments, which, of course, would not exceed a period of six years.

A. And sue for refund at the same time?

Q. No, pur—— A. Well, we don't——

Q. ——pursuant to compromise.

A. ——well, we don't want to pay a refund; we haven't paid any penny of it.

Q. You have not? Have you made an offer in compromise to the Treasury Department at Washington of a lesser amount in full discharge of the full amount?

A. No, I haven't, Mr. Towse.

Mr. Towse: No further questions.

The Court: Do you want to question yourself further?

(Witness excused.)

The Court: Call your next witness.

Mr. Kashiwa: That's our case, your Honor.

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil No. 733, Mitsukiyo Yoshimura vs. Fred H. Kanne, U. S. Collector of Internal Revenue, held in the above-named court on December 16, 18 and 19th, 1946, before the Hon. J. Frank McLaughlin, Judge.

March 5, 1947.

/s/ ALBERT GRAIN. [253]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD  
ON APPEAL

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 254, inclusive, are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$26.80 and that said amount has been paid to me by the appellant.

In Testimony Whereof, I have hereto set my hand and affixed the seal of said court this 24th day of March, A.D. 1947.

[Seal]        /s/ WM. F. THOMPSON, JR.,  
   Clerk, United States District  
   Court, District of Hawaii.

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[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION

Comes now Mitsukiyo Yoshimura, plaintiff above named, by Shiro Kashiwa, his attorney, and hereby moves this Court to order the substitution of Henry

Robinson, Acting U. S. Collector of Internal Revenue for the District of Hawaii, as the defendant on appeal in the above entitled cause as Fred H. Kanne, the defendant above named, died on or about December 24, 1946, and the said Henry Robinson was duly appointed Acting U. S. Collector of Internal Revenue for the District of Hawaii and continues to be so and as the above entitled cause of action was instituted and the appeal being prosecuted therefrom is against the said defendant Fred H. Kanne in his official capacity as U. S. Collector of Internal Revenue for the District of Hawaii.

This motion is based on the Affidavit of Henry Robinson and the Suggestion of Death and the records of this Court in the above entitled cause of action.

Dated at Honolulu, T. H., this 21st day of January, 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff.

/s/ By SHIRO KASHIWA,  
His Attorney. [256]

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[Title of District Court and Cause.]

### SUGGESTION OF DEATH

Comes now Mitsukiyo Yoshimura, plaintiff above named, by Shiro Kashiwa, his attorney, and suggests to the Court the death of Fred H. Kanne, defendant, above named, on or about December 24, 1946.



Dated at Honolulu, T. H., this 21st day of January, A.D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff.

/s/ By SHIRO KASHIWA,  
His Attorney. [257]

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[Title of District Court and Cause.]

AFFIDAVIT OF HENRY ROBINSON

Territory of Hawaii,  
City and County of Honolulu—ss.

Henry Robinson, being first duly sworn, on oath deposes and says:

That he was duly appointed Acting U. S. Collector of Internal Revenue for the District of Hawaii upon the death of Fred H. Kanne, U. S. Collector of Internal Revenue of the District of Hawaii, and that he has continuously held that office ever since.

/s/ HENRY ROBINSON.

Subscribed and sworn to before me this 21st day of January, A.D. 1947.

[Seal] /s/ EDWARD K. BUSH,  
Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires 6-30-49. [258]

[Title of District Court and Cause.]

ORDER OF SUBSTITUTION

The motion of Mitsukiyo Yoshimura, plaintiff above named, for an order to substitute Henry Robinson, Acting U. S. Collector of Internal Revenue for the District of Hawaii, as the defendant on appeal in the above entitled cause, having come before this Court and it appearing to this Court that Fred H. Kanne, defendant above named, died on or about December 24, 1946, and that said Henry Robinson was duly appointed Acting U. S. Collector of Internal Revenue for the District of Hawaii and continues to be so and that the above entitled cause of action was instituted and the appeal therefrom is being prosecuted against the said defendant Fred H. Kanne in his official capacity as U. S. Collector of Internal Revenue for the District of Hawaii,

It Is Hereby Ordered that Henry Robinson, Acting U. S. Collector of Internal Revenue for the District of Hawaii, be substituted as the defendant on appeal in the above entitled cause of action. [259]

Dated at Honolulu, T. H., this 21st day of January, A.D. 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above-Entitled  
Court.

Approved as to Form:

/s/ EDWARD A. TOWSE,  
Assistant United States Atty.,  
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION TO STAY

Comes now Mitsukiyo Yoshimura, Plaintiff above named, by Shiro Kashiwa, his attorney, pursuant to Section 62-C of the Rules of Procedure in the Federal Courts and hereby moves for a stay by this Court during the pendency of the appeal of this cause of the collection by the Defendant of the taxes assessed, and further that this Court set an amount for a bond as provided for in said Section 62-C.

Dated at Honolulu, T. H., this 17th day of January, A.D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff.

/s/ By SHIRO KASHIWA,  
His Attorney. [262]

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NOTICE OF MOTION

Please take notice that the above motion will be presented to the Honorable Frank J. McLaughlin at the hour of . . . . o'clock . . .M., on . . . . ., the . . . . day of . . . . ., 1947, or as soon thereafter as counsel can be heard, in his Courtroom in the Federal Building, Honolulu, T. H.

SHIRO KASHIWA,  
Attorney for Plaintiff. [263]

[Title of District Court and Cause.]

ORDER ENJOINING COLLECTION OF  
TAXES DURING PENDENCY OF APPEAL

The motion of Mitsukiyo Yoshimura, plaintiff above named, pursuant to Section 62-C, Rules of Procedure of Federal Courts, moving for a stay by this Court during the pendency of the appeal of this cause of the collection by the defendant of the tax assessed, and for the setting of a bond or the requirement of other security as provided in said Section 62-C, having come before this Court on the 17th day of January, 1947, and upon the showing of the parties made at the time of the said hearing and upon the showing that the plaintiff above named, Mitsukiyo Yoshimura, intends to appeal from the final judgment entered in the above entitled cause,

It Is Hereby Ordered that the defendant, Henry Robinson, Acting U. S. Collector of Internal Revenue for the District of Hawaii, is hereby enjoined and prohibited from collecting from the plaintiff Mitsukiyo Yoshimura during the pendency of the appeal of this cause, the following: (1) the alleged Federal Income Tax [265] deficiencies of said plaintiff, to wit \$1,021.94 in 1941, \$1,792.25 in 1942, and \$3,510.81 in 1943; (2) the fifty per cent penalties imposed thereon, to wit: \$510.97 for 1941, \$896.13 for 1942, and \$1,755.41 for 1943; (3) and the interest to be computed under the law on said deficiencies.

Dated at Honolulu, T. H., this 21st day of January, A.D. 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above-Entitled  
Court.

Approved as to Form:

/s/ EDWARD A. TOWSE,  
Asst. United States Attorney,  
Attorney for Defendant.

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[Title of District Court and Cause.]

### ORDER FOR SECURITY

The motion of Mitsukiyo Yoshimura, Plaintiff above named, pursuant to Section 62-C, Rules of Procedure of Federal Courts, moving for a stay by this Court during the pendency of the appeal of this cause of the collection by the defendant of the tax assessed, and for the setting of a bond or the requirement of other security as provided for in said Section 62-C, having come before this Court on the 17th day of January, 1947, and upon the showing of the parties made at the time of the said hearing an order enjoining the defendant from collecting from the plaintiff during the pendency of the appeal of this cause any and all taxes allegedly due for alleged delinquent income tax payments to the United States Government by virtue of assessments issued against said Mitsukiyo Yoshimura for the years 1941, 1942 and 1943, having been issued,

It Is Hereby Ordered that the plaintiff Mitsukiyo Yoshimura deposit and leave during the pendency of the appeal [267] in this cause with the clerk of this court Certificate of Title No. 35,165 issued by the Land Court of the Territory of Hawaii to Mitsukiyo Yoshimura and Midori Tateishi Yoshimura, husband and wife, as joint tenants.

Dated at Honolulu, T. H., this 21st day of January, A.D. 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above-Entitled  
Court.

Approved as to Form:

/s/ EDWARD A. TOWSE,  
Asst. United States Attorney,  
Attorney for Defendant.

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[Title of District Court and Cause.]

CONSENT OF MIDORI TATEISHI YOSHIMURA FOR DEPOSIT OF CERTIFICATE OF TITLE No. 35,165

Comes now Midori Tateishi Yoshimura, wife of Mitsukiyo Yoshimura, Plaintiff above named, and hereby consents to the deposit and leaving of Certificate of Title No. 35,165 issued by the Land Court of the Territory of Hawaii to Mitsukiyo Yoshimura and Midori Tateishi Yoshimura, husband and wife, as joint tenants, during the pendency of the appeal in the above entitled cause with the clerk

of the above entitled court, and she further agrees that said Certificate of Title may be kept by said clerk of court during the pendency of the appeal.

Dated at Honolulu, T. H., this 18th day of January, 1947.

/s/ MIDORI TATEISHI  
YOSHIMURA.

Approved as to Form:

/s/ EDWARD A. TOWSE,  
Asst. United States Attorney,  
Attorney for Defendant.

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[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated and agreed upon by the parties herein through their respective counsels that the Record on Appeal herein may be supplemented by the addition to and inclusion of the following in said Record on Appeal:

1. Motion for Substitution, Suggestion of Death, Affidavit of Henry Robinson and Order of Substitution.
2. Motion to Stay, Notice of Motion, Order Enjoining Collection of Taxes during Pendency of Appeal, Order for Security and Consent of Midori Tateishi Yoshimura for Deposit of Certificate of Title No. 35,165, and

Clerk's certification of receipt of said Certificate of Title.

3. This Stipulation.

Dated at Honolulu, T. H., this 27th day of March, A.D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff-Appellant.

/s/ By SHIRO KASHIWA,  
His Attorney. [271]

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The foregoing Stipulation is hereby approved this 27th day of March, A.D. 1947.

FRED H. KANNE,  
Defendant-Appellee.

/s/ By EDWARD A. TOWSE,  
Assistant United States Attorney, Attorney for Defendant-Appellee. [272]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO SUPPLEMENTAL TRAN-  
SCRIPT OF RECORD ON APPEAL

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing pages numbered



from 255 to 273, inclusive, are a true transcript of the additional pleadings requested by stipulation in the above-entitled cause, as the same remains of record and on file in my office, said additional pleadings to be supplemented to the record on appeal in said cause, and that the costs of this supplemental transcript of record are \$9.00 and that said amount has been paid to me by the appellant.

I further certify that Certificate of Title No. 35,165 issued by the Land Court of the Territory of Hawaii to Mitsukiyo Yoshimura and Midori Tateishi Yoshimura, has been deposited with me in this office.

In Testmony Whereof, I have hereto set my hand and affixed the seal of said court this 28th day of March, A.D. 1947.

[Seal] /s/ WM. F. THOMPSON, JR.,  
Clerk, U. S. District Court,  
District of Hawaii. [273]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

MITSUKIYO YOSHIMURA,

Plaintiff-Appellant,

vs.

HENRY ROBINSON, Acting U. S. Collector of  
Internal Revenue,

Defendant-Appellee.

STATEMENT OF POINTS ON APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF HAWAII IN  
CIVIL CASE No. 733

Mitsukiyo Yoshimura, Plaintiff-Appellant above named, intends to rely upon the following points on this appeal herein:

1. That the United States District Court for the Territory of Hawaii erred in granting, after counsel for said Plaintiff-Appellant rested his case, the Motion to Dismiss of counsel for Defendant-Appellee above named, on the ground that the United States District Court for the Territory of Hawaii had no jurisdiction in said cause. (Certified Record on Appeal, Page 247; Written Order Sustaining Motion to Dismiss, Certified Record on Appeal, Pages 40-43.)

2. That the United States District Court for the Territory of Hawaii erred in granting, after counsel for said Plaintiff-Appellant rested his case, the Motion to Dismiss of counsel for said Defendant-Appellee, on the ground that said Plaintiff-Appellant's evidence adduced in said Court was not sufficient to grant the relief as prayed for by said Plaintiff-Appellant. (Certified Record on Appeal, Page 247; Written Or-

der Sustaining Motion to Dismiss, Certified Record on Appeal, Pages 40-43.)

Dated at Honolulu, T. H., this 9th day of April, A.D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff-Appellant.

/s/ By SHIRO KASHIWA,  
His Attorney.

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[Title of Circuit Court of Appeals and Cause.]

### STIPULATION

It Is Hereby Agreed and stipulated by the parties above named, through their respective counsels, that the entire Record on Appeal, added thereto by a Supplemental Record on Appeal, of the cause of Mitsukiyo Yoshimura vs. Henry Robinson (the latter being substituted in place of Fred H. Kanne, deceased), tried before the United States District Court for the Territory of Hawaii as Civil Case No. 733, including all the exhibits in evidence in said cause, filed and docketed in the above entitled Court be printed with the following exceptions:

1. The several fly-leaves. (Certified Record on Appeal, Pages 4, 14, 19, 32, 34, 36, 39, 44, 48, 52, 255, 261, 264 and 270.)

2. The arguments transcribed in the Transcript of Proceedings, said arguments being in regards to the Motion to Dismiss made by counsel for Defendant-Appellee above named after counsel for Plaintiff-Appellant above named

had rested his case. (Certified Record on Appeal, Pages 171-252.)

Dated at Honolulu, T. H., this 9th day of April, A.D. 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff-Appellant.

/s/ By SHIRO KASHIWA,  
His Attorney.

Approved:

HENRY ROBINSON,  
Defendant-Appellee.

By the United States Attorney, District of Hawaii, His Attorney.

/s/ By EDWARD A. TOWSE,  
Asst. United States Attorney,  
District of Hawaii.

[Endorsed]: Filed April 14, 1947.

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[Endorsed]: No. 11584. United States Circuit Court of Appeals for the Ninth Circuit. Mitsukiyo Yoshimura, Appellant, vs. Henry Robinson, Acting U. S. Collector of Internal Revenue, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed April 14, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 11584

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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MITSUKIYO YOSHIMURA,

Appellant,

vs.

HENRY ROBINSON, Acting U. S. Collector of  
Internal Revenue,

Appellee.

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SUPPLEMENTAL  
Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Hawaii

FILED  
AUG 30 1947

PAUL P. O'BRIEN,  
CLERK



No. 11584

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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MITSUKIYO YOSHIMURA,

Appellant,

vs.

HENRY ROBINSON, Acting U. S. Collector of  
Internal Revenue,

Appellee.

---

SUPPLEMENTAL  
Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Hawaii





The Court: Very well. Call the Government's first witness.

Mr. Towse: If the Court please, may I have one moment? The defendant at this time moves that the complaint be dismissed upon two grounds: first, that upon the facts and the law the plaintiff has made no showing to any right or any relief prayed for in the complaint; and second, that the complaint, insofar as this hearing and the Court is concerned, is wanting in jurisdiction.

On the first ground, briefly as I understand the situation, the jurisdiction of the Court was in question, and permanent injunction prayed for, and cancelling of an administrative form, that is, the 870, and a permanent injunction prayed for as to the assessment and collection of the tax. The sole exception being that in cases of extraordinary circumstances the Court would invoke the jurisdiction. I don't dispute that question nor that ruling of law.

Now, we have here, if the Court please, the following—following the preliminary motion to dismiss, I submit, the facts brought out by the plaintiff themselves do not warrant the relief or sustain the jurisdiction which had already been invoked, in that the irreparable damage on the question of equity shows that the plaintiff was at one time engaged in the service station business. It is undisputed that since August '46 he has no longer been engaged in the business. And it is my understanding, and the cases so hold, that irreparable damage to a business or to an individual in itself

is insufficient to invoke the equitable jurisdiction in a matter of this nature. The unusual hardship and circumstances, again I submit the facts brought out by the plaintiff himself. I say in that respect, your Honor, that it is a large amount, and I offered this affidavit, and, of course, I am bound by the one that was put in. But is there any difference, if the Court please, between this defendant and any other person who at one time or another in his life, having been confronted with tax difficulties, finds himself in a position where he can't discharge the amount assessed through enforcement or administrative channels. The statute and Internal Revenue regulations provide—and it is so pleaded in the answer—five separate ways and means by which this defendant can proceed. I say five, your Honor, for this reason: my understanding on the invoking of equitable jurisdiction is that there must be a complete absence of a plain and complete and adequate remedy at law. Here, your Honor, the defendant affirmatively alleges—let's assume that one of them is concluded by virtue of 870 being executed. This defendant, if your Honor please, I say has not exhausted either the administrative or legal channels prior to invoking the aid of equity and the jurisdiction of this Court on that particular point. And the one of hardship I reiterate, your Honor, I say here is completely lacking in view of the alternatives which this plaintiff has not availed himself of.

Now, the irreparable damage alleged, and recounting what I said a minute ago, as I understand

the cases, the irreparable damage of inability to pay is not in itself sufficient grounds to invoke the aid of this Court to the end that a permanent injunction issue.

Mr. Kashiwa: Your Honor, I think I never did make that form 870, which is part of the record, the evidence in this case. May I reopen the case? I have a similar form here. May I offer this at this time?

The Court: Any objection?

Mr. Towse: No objection.

The Court: Very well, it may become the plaintiff's exhibit next in order.

The Clerk: Plaintiff's Exhibit F.

(The document referred to was received in evidence as Plaintiff's Exhibit F.)

PLAINTIFF'S EXHIBIT F

Civil 733

Admitted 12-18-46

Form 870

Treasury Department  
Internal Revenue Service  
(Revised June 1941)

(Date Received)

Waiver of Restrictions on Assessment  
and Collection of Deficiency in Tax

Pursuant to the provisions of section 272(d) of the Internal Revenue Code and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272(a) of the In-

ternal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

income tax in the sum of \$.....

taxable year ended.....

(declared value) excess-profits

tax in the sum of \$.....

taxable year ended.....

excess profits tax in the sum of \$.....

taxable year ended.....

in the sum of \$.....

amounting to the total sum of.....\$.....

together with interest thereon as provided by law.

-----  
(Taxpayer)

-----  
(Taxpayer)

-----  
(Address)

By .....

Date.....

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Note:—The execution and filing of this waiver at the address shown in the accompanying letter

will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a joint return of a husband and wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

Honolulu, T. H., December 19, 1946

2:05 o'Clock P.M.

The Clerk: Civil No. 733, Mitsukiyo Yoshimura versus Fred H. Kanne, Collector of Internal Revenue, for further trial.

Mr. Towse: Ready for the defendant, your Honor.

The Court: I believe when we adjourned yesterday we were still discussing the merits, if any, of this motion to dismiss.

Mr. Towse: At this time, if your Honor please, I owe counsel an apology on my representation yesterday that he had not filed a power of attorney, executed by this plaintiff. I found this morning that there was in a file which was in another office of Mr. Glutsch a duly executed power of attorney. And I ask that my remarks with reference to the failure to file the executed power of attorney relative to his representation of his client be stricken from the record.

The Court: I am not sure it is necessary to strike it from the record.

Mr. Towse: Very well.

The Court: So long as it is corrected. Further, it seems to me on that particular point, from this circular number 230 that you made available to me this morning, that that power of attorney is only required where the attorney representing the client has a tax case which he is handling upon a contingent basis.

Mr. Towse: I believe there is one paragraph

that is marked in italics, your Honor, which requires in every instance——

The Court: No, page seven of this says, when a power of attorney is filed it shall be the duty of the attorney to file with the same this particular statement. (Indicating on a pamphlet.) You are referring perhaps to the matter over here. (Indicating.)

Mr. Towse: Section eight.

The Court: Section eight on page fifteen, which says the power of attorney may be required, whereas if the attorney represents a client on a contingent fee agreement then he has to file a power of attorney. Not that it makes any difference, because you say that this power of attorney was filed anyway.

Mr. Towse: I don't like to bother your Honor, but the latter part there says, "In the prosecution of claims before the Bureau of Internal Revenue, involving the assertion of demands for payment of money by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized." That is the part.

The Court: Well, that conflicts with the first sentence which says "may." It shall be a direction to the employees in the Internal Revenue Department that they shall require it in such instances. I don't know. It doesn't make much difference here anyway. There was one apparently on file.

Mr. Kashiwa: May the record at this time be reopened and that fact be shown for the record?

The Court: Based on the evidence introduced by the plaintiff to support the allegations of this

complaint I must take that evidence in its most favorable light. My sympathies are definitely, obviously, with the taxpayer, because I definitely think, if the facts are as the plaintiff's evidence picture them to be, that the representative of the Treasury Department certainly acted arbitrarily and in an unbecoming manner in this case. But no matter how much my sympathies might be with the taxpayer, based on these facts, unless he can successfully bring himself within the exception to this statute as carved out by the judicial decisions, there is nothing much I can do about it. And I am not satisfied that the plaintiff has brought himself within the scope of this limited exception, in that there is no showing either that the tax is illegal or that the lawful tax as applied to this particular plaintiff is illegal. In the absence of such showing, plus a showing that there are unusual and exceptional circumstances, which last point the evidence may meet, I am inclined to grant the motion to dismiss.

Mr. Kashiwa: Your Honor, if that is the case—I tried to reopen the case for further proof in that there is no such additional amount due.

The Court: That wouldn't cover the point of the ruling. In other words, in this proceeding it is not permissible for this Court to compute what the tax is or what it should have been. I have no such power as that. So I am not interested in the computation of the tax here, so that I would not allow you to reopen on that point, although the record may show that you offered to reopen on that



point and that I will deny your request and you may have an exception on that ground, too.

Mr. Kashiwa: Yes. Then your Honor's position in this case is that the type of case that could come into this Court is only the type of case where one says that he is within the class or not within a class, is that it?

The Court: No, I am not going to answer your question in that way. But I will repeat my ruling in a little different language, that I find as a matter of law that it is necessary, in order to come within this exception, one, that the plaintiff established that the tax is illegal or that the exaction of the tax as applied to him is illegal; and secondly, there are unusual and special circumstances. On the second point you may have sufficient evidence to meet that requirement. But I find that you failed on the first point to prove, as I have said, either that the tax is illegal or that it is illegal as applied to this taxpayer.

Mr. Kashiwa: That is not clear to me. Your Honor, when I have a decision rendered to me, I'd like to have it very clear.

The Court: All right, very bluntly, you have not established that the income tax law is illegal.

Mr. Kashiwa: Oh, the income tax law is illegal.

The Court: Nor have you established that the income tax law as applied to this taxpayer is illegal.

Mr. Kashiwa: How about the rules and regulations thereunder? How about them, now, as applied to this party? They are working under rules and regulations how to collect; when an 870 is acquired,

that they can forthwith issue this assessment. Now, my contention is that that is where that illegality comes in. I am not saying that the income tax law is illegal, but in the way they administer the rules and regulations.

The Court: I know that is your contention, and for some time I thought that you had a point well taken. But I am now satisfied that that is not so, that there is a distinction between an illegal assessment and an illegal tax.

Mr. Kashiwa: Well, your Honor, that there is a distinction between an illegal tax and an illegal assessment, I am quite sure that I can enlighten your Honor on that.

The Court: Well, I think possibly we spent enough time on that.

Mr. Kashiwa: As far as I'm concerned, your Honor, this question came up, this very fine point came up during this argument here, and I haven't had much time. But if that is your Honor's holding, I can show your Honor that that is not correct. I am perfectly willing, your Honor, to look up authorities and submit authorities. I haven't been given the proper time. These matters are very complicated. It is a type of law which we seldom run into. And I am willing to submit authorities, if your Honor wishes. And if that is the point your Honor wishes to differentiate upon, I am perfectly willing to go to bat and show your Honor that there is no such distinction.

The Court: I don't think there is any necessity of that. That is my ruling. I am not going to

change it. If you want to appeal, why you can go to the Ninth Circuit Court, that I am wrong.

Mr. Kashiwa: Your Honor, I am willing to submit authorities and try to get the right view on this thing. If your Honor is mistaken, I am willing to inform your Honor about it. I haven't had the time to look this thing up. It's just the very fine point, and I am willing to be perfectly fair on this thing and willing to work out the thing for my client. It's a sum which involves his life savings and it's something which is very important to him, and I wish that I had been given an opportunity, I wish that I would be given an opportunity to be heard.

The Court: Well, the ruling will stand. I appreciate the position in which you find yourself. You have a right to appeal, and you have full and complete exceptions to the ruling. I might add that I don't particularly like it either. So there is nothing personal in the ruling.

Mr. Kashiwa: Well, your Honor, there is no necessity, the way I look at it, to make this ruling right here this afternoon.

Mr. Towse: Oh, yes.

Mr. Kashiwa: I am willing to submit authorities.

The Court: You may move for the Court to reconsider its ruling and submit points in authorities in support of the proposition, and if I feel that they are worthy of further consideration, I will pass on your motion to reconsider. But this thing has got to come to an end some time. I am

satisfied that my ruling is correct. You have remedies from the ruling. The only possible thing that I would consider would be a motion by you, based on points in authorities to reconsider the ruling of the Court. Do you want to do that?

Mr. Kashiwa: I would rather have the question opened, your Honor. Then we can come to court on a day certain and I will submit briefs on the points. I am perfectly willing to do that, because it is a very important matter and counsel is willing to submit authorities on the very disputed points of law. It is within your discretion to hold your decision up one way or another. This is only on a motion to dismiss. And I am really conscientious about this matter and I do feel that that would be the just thing.

The Court: I know very well how conscientious you are about it and the position in which you find yourself, and I agree with you that your client has been treated rather shabbily by the income tax people, if the allegations are such as you outline in your complaint and as outlined by your evidence. I repeat, that my sympathies are with your side of the case, but I have given this matter some time and attention, as you must have done before you came into court, and that is my considered ruling on the matter. And you have a right to appeal and convince the Ninth Circuit Court that I am wrong. And I have also indicated to you that I will give you an opportunity to move the Court to reconsider

its ruling, if you want to, filing points in authorities to indicate wherein I am wrong. But the ruling as made this afternoon will stand.

Mr. Kashiwa: Well, your Honor, at this time may I have an exception to your Honor's ruling?

The Court: You certainly may.

Mr. Kashiwa: On the grounds that it is contrary to law and the facts.

The Court: You certainly may. All right.

(The Court adjourned at 4:10 o'clock p.m.)

In the United States Circuit Court of Appeals  
for the Ninth Circuit

On Appeal from the United States District Court  
for the Territory of Hawaii in Civil Case No. 733  
No. 11584

MITSUKIYO YOSHIMURA,

Plaintiff-Appellant,

vs.

HENRY ROBINSON, Acting U. S. Collector of  
Internal Revenue,

Defendant-Appellee.

### STIPULATION

It Is Hereby Stipulated and agreed upon by the parties above named, through their respective counsels, that a Supplemental Transcript of Record of the above entitled cause be printed and filed in said cause in the above entitled Court, said Supplemental Transcript of Record to contain the following:

1. Pages 107-110 of the Transcript of Proceedings (Certified Record on Appeal, Pages 170-173), beginning with "The Court: Very well. Call the Government's first" at the very bottom of Page 107 of said Transcript of Proceedings (Certified Record on Appeal, Page 170) and ending with "(The document referred to was received in evidence as Plaintiff's Exhibit F)" on Page 110 of said Transcript of Proceedings (Certified Record on Appeal, Page 173.

2. Plaintiff's Exhibit "F" in evidence.

3. Pages 133-135 of the Transcript of Proceedings (Certified Record on Appeal, Pages 196-198) ending with "The Court: Yes. Yes, the record may affirmatively show that Mr. Towse corrects a statement that he made yesterday." on Page 135 of said Transcript of Proceedings (Certified Record on Appeal, Page 198).

4. Pages 184-189 of the Transcript of Proceedings (Certified Record on Appeal, Pages 247-252.)

5. This Stipulation and Order.

Dated at Honolulu, T. H., this 18th day of July, 1947.

MITSUKIYO YOSHIMURA,  
Plaintiff-Appellant,

By /s/ SHIRO KASHIWA,  
His Attorney.

HENRY ROBINSON,  
Acting U. S. Collector of  
Internal Revenue,  
Defendant-Appellee,

By THE UNITED STATES  
DISTRICT ATTORNEY  
for the District of Hawaii,  
His Attorney.

By /s/ EDWARD A. TOWSE,  
Assistant United States  
District Attorney for the  
District of Hawaii.

[Title of Circuit Court of Appeals and Cause.]

ORDER

In view of the foregoing Stipulation attached hereto

It Is Hereby Ordered that a Supplemental Transcript of Record of the above entitled cause be printed as provided in the foregoing Stipulation and filed in the above entitled Court, said printing and filing to be done according to Rule 19 of the Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, this 23rd day of July, 1947.

/s/ FRANCIS A. GARRECHT,  
Senior United States  
Circuit Judge.

Approved:

HENRY ROBINSON,  
Acting U. S. Collector of  
Internal Revenue,  
Defendant-Appellee,

By THE UNITED STATES  
DISTRICT ATTORNEY  
for the District of Hawaii,  
His Attorney.

By /s/ EDWARD A. TOWSE,  
Assistant United States  
District Attorney for  
the District of Hawaii.

[Endorsed]: Filed July 23, 1947.



[Endorsed]: No. 11584. United States Circuit Court of Appeals for the Ninth Circuit. Mitsukiyo Yoshimura, Appellant, vs. Henry Robinson, Acting U. S. Collector of Internal Revenue, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed April 14, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

